APPENDIX.

SOME CASES NOT HITHERTO REPORTED IN FULL.

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THE Centennial Appendix, at the end of Volume 131, contained two tables of omitted cases. In the first table the cases were reported in full. The second contained only a list of cases, term by term [see pages ccxx to ccxxxi], in which opinions were given which were supposed to decide the case on the facts; or on the authority of some case referred to; or in which the decision was made partly on the facts and partly on such authority; or in which judgment was entered either on the stipulation of the parties, or for incompleteness of the record, or for non-compliance with the rules of court. It was assumed that it was not worth while to occupy the space necessary to report these cases in full. The fact that two or three of them have been referred to in opinions of the court, since rendered, shows that this assumption was not well founded, and calls upon the reporter now to print them in full.

UNITED STATES *v.* HARRISON.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 126. Submitted April 21, 1852. — Decided April 23, 1852.

The evidence and principles decided in this case are the same in substance with those in *United States* v. *Philadelphia*, 11 How. 609.

THE case is stated in the opinion.

MR. CHIEF JUSTICE TANEY delivered the opinion of the court.

The appellees in this case claim title to the land in question under certain instruments of writing executed by the Baron Carondelet in favor of the Baron Bastrop in 1796 and 1797, which are fully set out in the case of *The United States* v. *The Cities of*

Philadelphia and New Orleans, reported in 11 How. 609. It was decided in that case that these instruments of writing did not convey to the Baron Bastrop a title to the lands therein described. The decree in this case in favor of the appellees must therefore be reversed and a mandate issued directing the District Court to enter a decree in favor of the United States and dismiss the petition.

This case not to be reported, the evidence and principles decided being the same in substance with the case referred to in 11 Howard's Reports. *Reversed.*

Mr. Attorney General for appellant.

No appearance for appellees.

UNITED STATES *v.* CARRÈRE.

UNITED STATES *v.* GRAFTON.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Nos. 78 and 80. Submitted March 1, 1853. — Decided March 3, 1853.

Reversed upon the authority of *United States* v. *Philadelphia & New Orleans*, 11 How. 609.

THE case is stated in the opinion.

MR. CHIEF JUSTICE TANEY delivered the opinion of the court.

The appellees in these two cases claim title under an instrument of writing which they allege was a grant by the Spanish authorities to the Baron de Bastrop. In the case of *The United States* v. *The Cities of Philadelphia and New Orleans and Livingston and Callender's Heirs*, reported in 11 How. 609, the court decided that this instrument of writing conveyed no title to the Baron de Bastrop; and consequently the petitioners can derive no title to themselves under it.

The decree in each of these cases must therefore be reversed and a mandate issued to the Circuit Court, directing the petitions to be dismissed. *Reversed.*

Mr. Attorney General for appellant.

No appearance for appellees.

STEAMBOAT NIAGARA *v.* VAN PELT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 69. Stipulation to dismiss filed December 11, 1854. — Decided February 15, 1855.

This case is dismissed in accordance with the stipulation of counsel.

Mr. Chief Justice Taney announced the decree of the court.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York, and it appearing to the court here by a stipulation on file, signed by the counsel for the respective parties, that the matters in controversy had been agreed and settled between them, and that the case should be dismissed without costs to either party as against the other, it is, thereupon, now here ordered and decreed by this court that this cause be, and the same is hereby, dismissed, and that each party pay their own costs in this court.

Dismissed.

Mr. Alexander Hamilton, Jr., for appellants.

Mr. —— *Marsh* for appellees.

COGGESHALL *v.* HARTSHORN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 60. Stipulation to reverse filed December 12, 1856. — Decided December 12, 1856.

A decree is entered by consent of parties, modifying the decree of the court below.

The case is stated in the opinion.

Mr. Chief Justice Taney announced the decree of the court.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Massachusetts and on the stipulation filed by the counsel of the respective parties that the following decree should be entered, on consideration whereof, and on the motion of Mr. Curtis, of counsel for the appellants, it is now here ordered, adjudged, and decreed that so much of the decree of the Circuit Court as required payment by the appellants to the appellees of the sum of six thousand nine hundred and forty-five dollars and sixty-three cents and interest thereon as profits, and six hundred and ninety-one dollars and seventy-nine cents as costs, be, and the same is hereby,

reversed; and that so much of the said decree as relates to an injunction restraining the appellants, their agents and servants and assigns, from using certain patterns and stoves therein mentioned be, and the same is hereby, affirmed and the injunction made perpetual; and that the said Circuit Court be, and the same is hereby, directed to enter a full satisfaction of all damages and costs in this cause. And it is further ordered and decreed by this court that neither party take any costs in this or the Circuit Court in this cause. *Affirmed in part and reversed in part.*

Mr. G. T. Curtis for appellants.

Mr. J. A. Loring for appellees.

WATTERSON *v.* PAYNE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 56. Submitted February 1, 1858. — Decided February 24, 1858.

It appearing that this cause was brought here for delay only, the court dismisses it on motion of the defendant in error, and awards damages at the rate of ten per cent a year.

A motion made by the plaintiff in error after the entry of such judgment to appear and for leave to file a brief comes too late.

THE case is stated in the opinion.

MR. CHIEF JUSTICE TANEY announced the following judgment of the court:

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel. On consideration whereof, it appearing to this court that this cause has been brought to this court solely for the purpose of delay, it is thereupon now here ordered and adjudged by this court, that the judgment of the said Circuit Court (which on the 8th day of December, 1855, the date on which it was signed, amounted to $3967.82, including the principal and interest to said date) be, and the same is hereby, affirmed, with costs, in both this and said Circuit Court, and damages at the rate of ten per cent per annum on said $3967.82, from said 8th December, 1855, to this 24th day of February, 1858, and without any further damages or interest upon either the judgment of the said Circuit Court or this court. And it is further ordered and adjudged by this court, that this cause be, and the same is hereby, remanded to the said Circuit Court, with directions to issue

an execution in favor of the said Andrew M. Payne and against the said George W. Watterson for the sum of $4845.16 (being the amount of the aforesaid judgment of the said Circuit Court, together with the damages thereon, at the rate of ten per centum per annum, as aforesaid) and for $——, the costs laid out and expended by the said Andrew M. Payne in this case in this court, and also for the costs in this case in the said Circuit Court.

Affirmance so ordered.

Mr. Benjamin for defendant in error.

No appearance for plaintiff in error.

April 12, 1858, Mr. Chief Justice Taney announced the following order of the court:

A motion is made at the present session of the court by counsel for the plaintiff in error to open the judgment in this case, to enable him to file a brief or printed argument.

The case was brought up to this court and entered by the plaintiff in error on the docket at December Term, 1856. The defendant in error appeared at that term, but no appearance was entered for the plaintiff. At the late session of the court at the present term the case was reached in the regular order of the docket and called for trial on the first day of February. The defendant in error appeared and submitted the case on a printed brief,—no counsel appearing on behalf of plaintiff. The judgment of the court was not delivered until Wednesday, February 24, and the court continued in session until Friday, the 26th, when it adjourned to the first Monday in this month; and up to the time of the adjournment no appearance had been entered for the plaintiff in error, nor any motion made to the court in his behalf.

Under such circumstances, a motion at the present session to open the judgment and permit a printed brief or argument in behalf of the plaintiff in error, comes too late, according to the rules and practice of this court, and is therefore *Overruled.*

Mr. Bradley for plaintiff in error.

Mr. Benjamin for defendant in error.

UNITED STATES *v.* OSIO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 74. Argued February 13, 1860. — Decided March 12, 1860.

Two records from the court below being docketed here in the same case and one being heard and disposed of by decree of reversal, the second is dismissed.

THE case is stated in the opinion.

MR. JUSTICE CLIFFORD announced the following order:

This is an appeal from a decree of the District Court for the Northern District of California, affirming a decree of the Land Commissioners.

On examination of the transcript we find it is the same case as the preceding in which the opinion has been delivered reversing the decree of the District Court — by some mistake two transcripts of the record were taken out in the court below, and each has been docketed in this court.

Accordingly, the case is dismissed, but no *procedendo* will issue to the District Court. *Dismissed.*

Mr. Attorney General for appellant.

No appearance for appellee.

RICHARDSON *v.* LAWRENCE COUNTY.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

No. 100. Submitted January 12, 1864. — Decided January 25, 1864.

Woods v. *Lawrence County*, 1 Black, 386, affirmed and applied to this case.

THE case is stated in the opinion.

MR. JUSTICE GRIER delivered the opinion of the court.

The certificate of division of opinion by the judges of the Circuit Court in this case is liable to the objection that one of the points submits the whole case. The first two present, in fact, but a single proposition, arising on the special verdict.

The law authorizing the issue of the bonds by the county, required that the railroad company should not sell them at less than par value. The verdict finds that they were sold by the railroad company for sixty-four cents in the dollar, and submits to the court whether the judgment should be for the interest at the par value of the bonds, or for only sixty-four per cent. On this point the court was divided, and the question is properly presented by the certificate of division.

Since this case was certified, that of *Woods* v. *Lawrence County*, 1 Black, 386, was argued at length by learned counsel and carefully considered by this court. The report of that case shows that all the questions that could arise in this case were decided in that. It

was there decided that the right of the holder of these bonds and coupons to recover their par value is not affected by the fact that the railroad company to whom they were given paid them out to contractors for sixty-four cents in the dollar.

The clerk will therefore certify to the Circuit Court that the motion of plaintiff "to enter a verdict and judgment in his behalf for the sum of $864 with interest, from November 14, 1861," ought to be granted.

This will dispose of the whole case. *So answered.*

Mr. J. Knox for plaintiff.

Mr. R. B. McCombe and *Mr. Lewis Taylor* for defendant.

UNITED STATES *v.* HALLOCK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 113. Submitted January 25, 1864. — Decided February 8, 1864.

A French vessel leaving France for New Orleans in May, 1861, with knowledge of the blockade, and obtaining full knowledge of the same at the Bahamas, continued its voyage and attempted to enter that port. *Held*, that it was subject to capture, and that so much of the cargo as belonged to citizens of New Orleans was subject to condemnation as enemy's property, and so much as belonged to citizens of New York to condemnation for illicit trading with the enemy.

THE case is stated in the opinion.

MR. JUSTICE GRIER delivered the opinion of the court.

The questions which affect the decision of this case have all been before this court in the "prize cases" decided at last term, and reported in 2 Black, 665.

On the 7th of July, 1861, the bark Pilgrim was attempting to enter the port of New Orleans, but ran aground in the night near Pass à l'Outre and was captured by the blockading vessels of the United States.

She had left Bordeaux, in France, about the 8th of May, after the news of the blockade of the southern ports had reached that place, and the American Consul would give no more papers to vessels bound for southern ports. In passing the Bahamas she had full information of the blockade. The master persisted, however, to continue his voyage and attempt to enter the port of New Orleans, till arrested by the blockading ships.

The cargo was consigned to owners in New Orleans. Two-

thirds of the vessel belonged to citizens of New Orleans, the other third to the master and another, citizens of New York and Connecticut. The cargo and two-thirds of the vessel were liable to confiscation as "enemy's property," and the remainder for illicit trading with the enemy.

The decree of the court below is therefore reversed, and record remitted with directions to enter a decree in conformity to this opinion. *Reversed.*

Mr. Attorney General and *Mr. Charles Eames* for the appellants.

UNITED STATES *v.* OLVERA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 149. Argued February 19, 1864. — Decided March 7, 1864.

Proceedings to obtain a Mexican grant in California commenced in 1845 and diligently prosecuted up to May, 1847, when judgment is rendered in the applicant's favor, and title issues to him, are held to be binding upon the United States, in the absence of fraud.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from the United States District Court for the Southern District of California.

The case involves the title to six square leagues of land, known by the name of Los Alamos and Agua Caliente, in the county of Los Angeles, under a Mexican grant dated 27th May, 1846. It was accompanied by a map designating the out-boundaries of the tract. Proceedings before the Governor, with a view to obtain the grant, commenced as early as the 21st August, 1845. On that day the claimants applied to have the Governor declare the land vacant, notwithstanding a previous grant to one Don Pedro Carillo, as he had failed to comply with any of its conditions. In pursuance of this application, Carillo was called twice before the alcalde to explain the reason of his neglect, and on the 6th September, 1845, at his own solicitation, seven months were allowed him within which to furnish the Governor with a satisfactory explanation. After the expiration of this time, and no explanation having been furnished by Carillo, on the 27th May, 1846, the Governor declared that, taking into consideration the seven months granted to citizen Pedro Carillo to stock the land granted to him in conformity within the colonization laws, and of the injury caused to the industry of

the country on account of his not occupying it, the denunciation of the tract of the Alamos and Agua Caliente in favor of the applicants may take place, to whom the proper title shall be issued, and on the same day a title was issued to them in due form.

The espediente embraces some dozen of documents, extending through a period of nine months, that is, from the 21st August, 1845, to the 27th May, 1846, and which, with the exception of the grant in form, were produced from the public archives. The last document in the espediente and which decreed a denunciation of the tract, directed that the title should issue, and which was issued accordingly, as we have seen, on the same day. All these documents were produced and proved before the board of commissioners, which rejected the claim on the ground the boundaries of the tract given in the grant were not specific enough to separate the land from the public domain, and therefore void for uncertainty.

No question was raised by the government before the board as to the genuineness of the grant. Indeed, the preliminary proceedings growing out of the steps necessary to be taken to procure a denunciation of the land as vacant, would seem to repel any suspicion of fraud against this government in making the grant.

In this connection it may not be improper to refer historically to the fact, that the grant of this tract to Carillo was made by Governor Micheltorena, October 2d, 1843. He presented his claim before the board of commissioners, 24th December, 1852, which was registered on 23d January, 1854, and on appeal to the district court, dismissed for failure to prosecute it, 10th August, 1860. (See Appx. p. 68, No. 498, Hoffman's Land Cases.)

It is true that this grant is not supported by any possession or occupation by the claimants prior to their application to the Governor, nor, indeed, could it have been, as it is founded upon a denunciation of the previous grant to Carillo, and the war existing between Mexico and this government at the time, and which soon afterwards resulted in the acquisition of the country, prevented the possession and occupation immediately after the date of the grant. There might be difficulty in supporting this claim in the absence of possession and occupation if it stood, simply, upon the title of the Governor of the 27th May, 1846. But the proceedings to obtain it commenced in 1845, and were pursued diligently till the 27th May, 1846. They were instituted, not to obtain a grant of a portion of the public domain, but to obtain a denunciation of a title to a tract already granted, and in this respect the claim stands upon a different footing from most of these Mexican grants. The

only questions that can well be raised are, whether or not the documentary evidence is genuine; and, second, whether it is competent to convey the title. The idea of antedating the documents would seem to be repelled by the character of the proceedings, running through a period of nine months, as well as from the fact that Carillo, and not the Mexican or American government, had the chief interest in them. Certainly it would be a very forced conclusion to predicate a fraud upon the American government in the denunciation of Carillo's title, and the re-grant of it to these claimants, which is all that there is of the case.

Decree of the District Court affirmed.

Mr. Attorney General and *Mr. John A. Wells* for appellants.

Mr. John B. Williams for appellees.

MILWAUKEE AND MINNESOTA RAILROAD CO. *v.* SOUTTER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 267. Argued February 1–9, 1864. — Decided February 23, 1864.

The removal or appointment of a receiver rests in the sound discretion of the court making the order, and is not revisable here.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from an order of the court below overruling a motion on the part of the Milwaukee and Minnesota Railroad Company, the appellants, to remove the receiver in possession of the La Crosse and Milwaukee Railroad, and put the petitioners in the possession and control of the eastern division, extending from Milwaukee to Portage; and which order overruled, also, an application in behalf of the applicants to remove the Milwaukee and St. Paul Railway Company from the possession nd control of this division, which had been given to them by a previous order of the court, under date of June 12, 1863. These applications by the appellants were made in a suit of foreclosure of what is known as the second mortgage upon the road given to secure the bondholders.

A receiver had been appointed in the cause at the instance of the complainants, and his powers were subsequently modified by the court, so as to let in the Milwaukee and St. Paul Company to run the road and manage its affairs under the direction of the court.

A decree had been rendered by the court in the foreclosure suit, previous to these motions, in favor of the complainants, from which they had taken an appeal, and which appeal, as has been decided at this term, had the effect to suspend the execution of the decree of the court below and all proceedings under it, except such as might be necessary for the preservation and security of the subject of litigation. But without inquiring whether the court below, after the appeal, had any authority to entertain the motions of the appellant, it is sufficient to say the order made in disposing of them is not the subject of an appeal. The removal or appointment of a receiver, which, in effect, was the object of the motions, rested in the sound discretion of the court, and the decision is not revisable here.

We should add that the decision already given in this cause at the present term, holding that the foreclosure suit pending in the District Court at the passage of the act extending the circuit court system to the State of Wisconsin, transferred it to the jurisdiction of the Circuit, is, of itself, conclusive against this appeal.

The appeal is dismissed.

Mr. M. H. Carpenter for appellants.

Mr. N. A. Cowdry and *Mr. N. J. Emmons* for appellee.

MILWAUKEE AND MINNESOTA RAILROAD CO. *v.* SOUTTER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 268. Argued February 1-9, 1864.—Decided February 23, 1864.

Milwaukee & Minnesota Railroad Co. v. *Soutter*, *ante*, 540, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from an order made in the suit of Soutter and Bronson, trustees of the second mortgage bonds of the La Crosse and Milwaukee Railroad Company, against the mortgagor and others, including the appellants, as defendants, in the court below, for the foreclosure of the mortgage. The appellants made a motion in the Circuit Court of the United States for Wisconsin, in which the suit was pending, for an order discharging the receiver that had been previously appointed at the instance of the complainants, and to put the petitioners and present appellants into the possession of the eastern division of the road, with its appurtenances, to

be run under their superintendence and control pending the suit of the foreclosure.

A like motion was made in the suit on the same day before the United States District Court, there being some doubt expressed, whether, under the act of Congress, July 15, 1862, extending the circuit court system to the State of Wisconsin, and the amendment of the same, March 3, 1863, (12 St. at Large, pp. 567–807,) the foreclosure suit then pending in the District Court had been transferred to the Circuit. This court have decided at the present term that the suit had been thus transferred. The motion in the District Court was denied, and an appeal taken to this court, which we have just disposed of.

The motion in the circuit, which is now before us on appeal, was also denied, and we need only say that one of the grounds for dismissing the appeal in the previous case is applicable to this, namely, that the order, in effect, refusing to remove a receiver and to appoint another, rests in the sound discretion of the court, and which is therefore not the subject of an appeal.

The appeal is therefore dismissed.

Mr. M. H. Carpenter for appellant.

Mr. N. A. Cowdry and *Mr. N. J. Emmons* for appellee.

MERRIAM *v.* HAAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 77. Argued and submitted December 23, 1864. — Decided January 23, 1865.

A loan was negotiated through a banker, who received the money from the lender, and failed before the borrower called for it. *Held*, on the facts disclosed by the proof, that he held it as the agent of the borrower.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

This is a suit to foreclose a mortgage for six thousand dollars, given to secure a loan of money. It is conceded that at the time the mortgage was executed and delivered, only four thousand dollars of the loan were received by defendant; it being stipulated that the remaining two thousand dollars were to be advanced when defendant should finish a building on the lot conveyed by the mortgage, and cause it to be insured for the benefit of plaintiff.

The loan was negotiated in some part through the banking house of Caldwell & Co., of St. Paul, where the defendant resided.

On the 30th day of July, the defendant brought to Caldwell & Co. the policy of insurance, and satisfied them that the condition on which he was to receive the last two thousand dollars had been complied with, and Caldwell & Co. drew on plaintiff residing in Boston, for that sum, and the draft was duly honored.

On the 9th day of August, Caldwell & Co. failed, without having paid over the money to defendant; and the sole question in the case is, for which of the parties to this suit did they hold the money at the time of their failure.

It is a mere question of the weight of testimony, and we are not able to see that any principle can be settled or illustrated by its discussion. It is perhaps sufficient to say that the testimony satisfies us that the money was held by the bankers as a deposit to the credit of the defendant, and that he knew and so understood it before their failure.

We will mention only a few of the reasons which induce this belief. Caldwell, one of the banking firm, testifies that it was under the instruction and at the request of defendant, that he drew on plaintiff for the money; that in doing so, he acted solely for defendant, and that on the day of the date of the draft, he permitted defendant to check against this money on his bank for the sum of two hundred and fifty dollars, and that in all defendant checked on him against that fund for over eight hundred dollars.

The clerk and bookkeeper of Caldwell & Co. testifies, that on the day the draft was drawn, defendant was credited on their books for two thousand dollars on account of said draft, and that he continued to draw it out by checks, until they amounted to over eight hundred dollars, at the day of their failure.

The pass-book of *plaintiff* with Caldwell & Co. is produced by himself, and shows a credit of two thousand dollars, dated August 30; but as this was some time after their failure, and after they had had this pass-book in their hands, it is evidently a mistake as to date. The clerk above mentioned says it was intended for August 1, as the arrangement was made on Saturday, July 30, after banking hours, and it was his custom to carry such transactions on the books of the next business day. This explanation seems reasonable, and as he swears that it conforms to the memorandum on his blotter, we see no reason to doubt it. The checks are shown which defendant drew between July 30 and August 9, and it is not denied that unless drawn against this money, the defendant was overdrawing his account. No proof is offered of any agreement or customary dealing by which he was authorized to do this.

These facts leave no doubt on our minds that the money must be considered at the time of the assignment of Caldwell & Co., a credit of the defendant with them, with his knowledge and consent, and the loss must be his.

The decree of the District Court is therefore

Reversed with costs, and the case remanded to the Circuit Court for the District of Minnesota, with directions to enter a decree in conformity with this opinion.

Mr. Lorenzo Allis for appellant.

Mr. J. M. Carlisle and *Mr. C. D. Gilfillan* for appellee.

UNITED STATES *v.* DE HARO.

MAHONEY, Intervenor, *v.* UNITED STATES.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Nos. 81 and 146. Argued December 27 and 28, 1865. — Decided January 15, 1866.

A plat made in 1853 of land adjudged to be covered by a Mexican grant, and confirmed in 1862, is sustained as the correct designation of the property covered by the grant.

THE case is stated in the opinion.

MR. JUSTICE GRIER delivered the opinion of the court.

The only question on these cases is, as to the location of the half league confirmed to the heirs of De Haro. The boundaries as described in the diseño annexed to the grant, would include a much larger quantity; all of which was claimed by the heirs. The District Court, affirming the decision of the board of commissioners, confirmed their title to the extent only of "*half a square league, being one league from north to south and half a league from east to west,* to be located according to, and within the calls of, the original grant, &c., regard being had to the occupation of the original grantee and the ancestor of the present claimant."

While the case was pending before the board, a preliminary survey was made, at the suggestion of the heirs, by the surveyor general. This survey exhibited a plat not only of the outside boundary of the diseño, but also those of the half league selected out of the whole, in case they could get no more. In 1853 the surveyor caused the sobrante or overplus land outside of the half league to be surveyed into sections as public lands. These sections have been settled and improved by parties claiming under the

government. On the 18th June, 1862, the District Court, after a full hearing of the parties, ordered a survey to be made in accordance with the election of the claimants made in 1853, "as evidenced by the plat of a survey of said lands by Leander Ransom, United States deputy surveyor," &c. The question whether such an election had been made was disputed, and fully examined by the court, as is shown by the opinion of the learned judge on the record. His reasons for the conclusion he arrived at need not be repeated. Suffice it to say, they fully demonstrate the correctness of the order made by the court.

The survey of Ransom conformed to all the calls of the decree, except that it did not include an abandoned improvement and building once made by Galindo, the original grantee. De Haro, who purchased from him, made his settlement and possession on another portion of the tract described in the diseño. He certainly had a right to do so; and his heirs, in selecting the best land for their half league, had a right to exclude the abandoned possession of Galindo. The land selected by them included the "actual occupation of their ancestor," and was in the form prescribed by the decree of the court. To include the abandoned occupation of Galindo, it would not conform to the other calls of the decree.

A survey, made according to this order or decree, ought to have satisfied all parties, as it did justice to all concerned. But, as nine years had elapsed since the Ransom survey was made, the state of the country in this region was much changed, and a new party intervened. Mahoney had purchased the title of the heirs of De Haro and the claimants under the United States had made valuable improvements. If this new party could set aside the selection made by those under whom he claimed, and make a new selection covering the improvements made by those claimants, it is not doubted he could have made a selection more satisfactory *to himself*, at the expense of the other claimants.

Soon after the date of this order or decree of the court, David Mahoney intervenes and petitions the court for a rehearing. In this petition he impugns the decision of the court as to the Ransom survey, denies that it was sanctioned by the heirs, and alleges fraud in the "*sectionizing*" the lands by the public officers.

The court, on this petition, reconsidered their decree, and made another on the 27th of June, 1863, according to another survey made on the 15th of June preceding. This survey is objected to by all the parties interested; by the United States, because it covers land claimed by settlers and purchasers from the govern-

ment; and, by Mahoney, because it does not include more of the land so occupied and improved.

This change of location is made, not because the selection made in 1853 was not made by consent of the heirs, or because the fraud charged upon the public officers was proved, or ought to affect the title of those claiming under the government, but because the land selected by them did not include the abandoned settlement made by Galindo.

Now if the heirs had a right to select within the boundaries of the original diseño; if their selection conformed with all the other calls of the decree, as to the length and breadth of the half league, and included the portion occupied by De Haro, their ancestor, no one had a right to complain if they rejected the abandoned occupation of Galindo. A tract, one league from north to south and half a league from east to west, including the land occupied by De Haro, cannot be made to include the other calls of the decree.

We are of opinion, therefore, that

The order or decree made on the 27th of June, 1863, *should be set aside, and that made on the 18th day of June,* 1862, *be confirmed, and that the appeal of Mahoney be dismissed.*

Mr. Attorney General, Mr. J. A. Wills and *Mr. Joseph H. Bradley* for the United States.

Mr. J. S. Black and *Mr. W. H. Tompkins* for De Haro *et al.* and Mahoney.

ROGERS *v.* KEOKUK.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 94. Submitted January 4, 1866. — Decided January 22, 1866.

The legislature of Iowa had power to authorize the city of Keokuk to subscribe for and take stock in a railway company, to issue its bonds therefor and to lay a tax to pay the interest thereon.

It had also power to give validity to bonds informally issued for such purpose.

A plaintiff who purchases such bonds in the open market is not chargeable with defects or irregularities in their issue.

The case is stated in the opinion.

Mr. Justice Grier delivered the opinion of the court.

It might be objected to the certificate of division of opinion in this case, that it is a submission of the whole case, first in separate propositions, and afterwards in a point containing all the rest.

When the case was tried below, the questions on which it depends had not been decided by this court, and were considered doubtful, having received in the courts of Iowa contrary solutions. But having since that time been decided in this court in other cases involving the same questions, we need only refer to them as containing answers to all the questions necessary to the decision of this case.

The case of *Gelpcke* v. *Dubuque*, 1 Wall. 175, 202, will afford an answer to the first, which is the most important question submitted, to wit: "That the legislature of the State of Iowa had the power to authorize the said municipal corporation, the city of Keokuk, to subscribe for and take stock in a railroad company and to issue its bonds in payment therefor, and to lay a tax to pay the interest upon said bonds."

It is not necessary to vindicate the correctness of this decision by further argument.

2. The legislature, having such authority, the "act legalizing the issue of county, city, and town corporation bonds in the counties of Lee and Davis" gave validity to said bonds notwithstanding any informality or illegality in their issuing. This is a sufficient answer to the second and third questions proposed.

3. The plaintiff having purchased the bonds in open market, for value, is not charged with any defect or irregularity in their issue.

The fifth and sixth questions proposed each include all that is presented, and need not be answered.

Mr. F. A. Dick for plaintiff.

No appearance for defendant.

ROGERS *v.* LEE COUNTY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 95. Submitted January 4, 1866. — Decided January 22, 1866.

Reversed on the authority of *Rogers* v. *Keokuk*, *ante*, 546.

THE case is stated in the opinion.

MR. JUSTICE GRIER delivered the opinion of the court.

In this case the court instructed the jury that "under the evidence the bonds issued were without authority and were void."

The facts of this case, and the question of law arising thereon, are the same in substance as those in the preceding case of *Rogers*

v. *City of Keokuk*. Without again repeating our reasons — it is ordered, that the judgment be reversed, and a *venire de novo* be awarded.

Reversed.

Mr. F. A. Dick for plaintiff in error.

Mr. J. C. Hall for defendant in error.

DUVALL *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

No. 145. Submitted March 27, 1866. — Decided April 3, 1866.

This court affirms after the close of the civil war, a judgment condemning a vessel and cargo for violation of the acts of July 13, 1861, c. 3, and August 6, 1861, c. 60, in transferring goods from Alexandria to a part of Virginia then in a state of insurrection.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Maryland.

The United States filed in the District Court a libel of information against certain goods seized, as was alleged, in transit to a part of the State of Virginia, then in insurrection. The libel was founded upon the fifth section of the act of Congress of July 13, 1861, chapter 3, and the first section of the act of August 6, 1861, chapter 60. The plaintiff in error interposed and claimed the goods. A verdict and judgment were rendered for the United States.

Upon the trial several exceptions were taken by the claimant. The judgment was affirmed by the Circuit Court, and the case is now before this court for review. An elaborate brief has been filed for the United States. No argument has been submitted for the plaintiff in error. From this we infer that the exceptions relied upon in the Circuit Court have been abandoned. We have, however, looked into them, and find nothing which we deem erroneous.

A motion has been made, and fully argued, in behalf of the plaintiff in error, to dismiss the case, upon the ground that the war having ceased the effect of that fact is the same which would have followed the repeal of the statutes upon which the prosecution is founded. That proposition was ruled adversely to the claimant by this court in the case of *The United States* v. *The Schooner*

Reform, Baily and Penniman claimants, decided at this term. 3 Wall. 617.

The subject was then fully considered. It is sufficient to refer to the opinion of the court in that case for an exposition of our views, without reproducing the considerations which controlled the decision. *The judgment below is affirmed with costs.*

Mr. George W. Dobbin and *Mr. William Price* for plaintiff in error.

Mr. Attorney General and *Mr. A. S. Ridgley* for defendant in error.

HORBACH *v.* PORTER.

HORBACH *v.* BROWN.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

Nos. 189, 190. Submitted December 1, 1865. — Decided December 18, 1865.

When two parties acquire title to the same tract of land from the same grantor, if the later grantee takes his deed with knowledge that the first grantee is in possession of the land, and has enclosed it, and is cultivating it, he is chargeable with knowledge of all the equitable rights of the first grantee with which an inquiry would have put him in possession.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

In these two cases the facts are the same, and the questions suggested by the records are exclusively questions of fact.

It is charged in the bill that Horbach, one of the defendants, having sold the land which is the subject of the controversy, and received the consideration for it, afterwards caused the equitable title under which he then claimed to be set aside by the Secretary of the Interior, and procured a patent to himself, for the land thus sold; and that he then conveyed the land to Wiggins, his co-defendant in these suits.

The plaintiffs are purchasers from Horbach's first vendee, and charge that Wiggins purchased with notice of their rights.

We are of opinion that the evidence sustains the allegations of the bill, although the answer of Wiggins denies them.

It is made pretty clear by the testimony that the charges against Horbach are true. And although it is not shown that Wiggins had any participation in this fraud, or that he had actual knowledge of the rights of plaintiffs when he purchased from Horbach, and

received the legal title, a case of constructive notice of those rights is well made out.

The plaintiffs in both cases were in possession of the land, having it enclosed by fence, and in actual cultivation at the time Wiggins bought of Horbach. This was sufficient to put him upon the inquiry, and if he had inquired he would have received full information of the superior equitable claims of complainants.

The plaintiffs in accordance with these views had decrees for conveyance of the legal title in the District Court in which the cases were first tried, and these decrees were affirmed on appeal by the Supreme Court of the Territory of Nebraska. On a simple matter of conflict of testimony like this, in which we are able to concur fully with the judgments of two courts which have already passed upon the same record, we do not deem it necessary to give any minute criticism upon the testimony on which these decrees are founded. *They are therefore affirmed with costs.*

Mr. J. J. Reddick for appellants.

Mr. J. M. Carlisle and *Mr. James M. Woolworth* for appellees.

HAMMOND *v.* MASSACHUSETTS.
McNEAL *v.* MASSACHUSETTS.
CLARK *v.* MASSACHUSETTS.

ERROR TO THE SUPERIOR COURT OF MASSACHUSETTS.

Nos. 240, 241, 242. Submitted February 27, 1866.—Decided March 26, 1866.

McGuire v. *Massachusetts*, 3 Wall. 387, followed.

Mr. Justice Nelson delivered the opinion of the court.

Enter in these cases the same judgment as in *McGuire* v. *Commonwealth of Massachusetts*, 3 Wall. 387.

Mr. N. Richardson and *Mr. C. Cushing* for plaintiffs in error.

Mr. C. J. Reed and *Mr. D. Foster* for defendant in error.

CHURCHILL *v.* UTICA.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

No. 286. Argued January 31, February 1, 2 and 5, 1866.—Decided March 26, 1866.

Reversed on the authority of *Van Allen* v. *Assessors*, 3 Wall. 573.

The case is stated in the opinion.

Mr. Justice Nelson delivered the opinion of the court.

Churchill is the only party against whom judgment was rendered in the court below, and the party who has brought a writ of error to this court.

The judgment is reversed, and the case remitted to the court below for proceedings there as directed in the case of *Van Allen* v. *Assessors*, 3 Wall. 573. We refer to the opinion in that case as governing this one. *Reversed.*

Mr. W. M. Evarts, Mr. C. B. Sedgwick and *Messrs. Edmonds & Miller* for plaintiff in error.

Mr. F. Kernan for defendant in error.

WILLIAMS *v.* NOLAN.

ERROR TO COURT OF APPEALS OF THE STATE OF NEW YORK.

No. 28. Argued January 31, February 1, 2 and 5, 1866.—Decided March 26, 1866.

Reversed on the authority of *Van Allen* v. *Assessors*, 3 Wall. 573

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court:

The opinion in the case of *Van Allen and Others* v. *Nolan and Others* governs this case, and the same judgment must be entered. *Judgment reversed and case remitted.*

Mr. J. H. Reynolds for plaintiff in error.

Mr. A. T. Parker for defendants in error.

BROWN *v.* JOHNSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 47. Submitted December 11, 1866.—Decided January 3, 1867.

Reversed on the authority of *Brown* v. *Bass*, 4 Wall. 262.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the Southern District of Mississippi.

The case involves the same questions examined in the case of *Brown* v. *Bass*, 4 Wall. 262, and the opinion in that case governs this, and shows that the court erred in the several rulings and instructions in this case. *Reversed.*

Mr. J. M. Carlisle and *Mr. J. D. McPherson* for plaintiff in error.

MINERAL POINT *v.* LEE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 164. Submitted April 18, 1867. — Decided April 22, 1867.

Affirmed on the authority of several cases of a similar character.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The action in the court below was brought to recover the amount of certain coupons issued by the town of Mineral Point of which Lee, the plaintiff below, was the holder. We think it unnecessary to repeat the views heretofore expressed in several cases of similar character. *The judgment is affirmed with costs.*

No appearance for plaintiff in error.

Mr. M. H. Carpenter for defendant in error.

UNITED STATES *v.* MAYRAND.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 187. Submitted May 15, 1867. — Decided May 16, 1867.

United States v. *Holliday*, 3 Wall. 407, followed.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This cause comes here, upon a certificate of division of opinion, from the Circuit Court of the United States for the District of Minnesota.

Mayrand was indicted for selling liquor to an Indian of the Chippewa Tribe, which tribe was then under the charge of an Indian agent, duly appointed by the government of the United States. He demurred to the indictment; and the question certified is, whether the act of Congress, under which the indictment was framed, has any force or validity in this case.

In the case of *The United States* v. *Holliday*, 3 Wall. 407, this very question was fully discussed and finally decided.

An affirmative answer must be certified to the Circuit Court.

Mr. Attorney General and *Mr. J. Hubley Ashton* for plaintiff.

No appearance for defendant.

TILLINGHAST *v.* VAN BUSKIRK.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 313. Argued April 12, 1867.—Decided April 22, 1867.

Green v. *Van Buskirk*, 5 Wall. 307, followed.

MOTION TO DISMISS. The case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

This opinion [in *Green* v. *Van Buskirk*, 5 Wall. 307] disposes also of the case No. 313, *Tillinghast* v. *Van Buskirk and Others*, in which the same order will be entered.

Mr. Amasa J. Parker for plaintiffs in error.

Mr. John B. Gale and *Mr. J. M. Carlisle* for defendants in error.

CONNELLSVILLE AND SOUTHERN PENNSYLVANIA RAILROAD *v.* BALTIMORE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

No. 413. Argued April 26, 1867.—Decided April 29, 1867.

The appellant was a proper party defendant in the court below, and duly took his appeal.

The order assigning the case for hearing at this term is rescinded.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

We have considered the motion to dismiss the appeal of the Pittsburgh and Connellsville Railroad Company, and are of opinion that that company was a proper party defendant in the court below and the appeal in the record appears to have been taken by this defendant as well as by the others. We must therefore overrule the motion to dismiss.

We have also further considered the motion to rescind the order heretofore made assigning the matter for hearing at this term, and have come to the conclusion that the order should be rescinded. And it is *So directed.*

Mr. John Knox, Mr. Andrew Stewart and *Mr. J. S. Black* for appellants.

Mr. J. H. B. Latrobe, Mr. R. Johnson and *Mr. J. L. Thomas, Jr.*, for appellees.

EX PARTE MILWAUKEE AND MINNESOTA RAILROAD CO.

ORIGINAL.

No. 8. Original. Submitted March 20, 1868.—Decided March 30, 1868.

A petition for a writ of mandamus is denied on the authority of *Minnesota Co.* v. *St. Paul Co.*, 6 Wall. 742.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an amended petition by the Milwaukee and Minnesota Company for a mandamus to the judges of the Circuit Court of the United States for the District of Wisconsin, commanding that court to order certain rolling stock, particularly described, to be taken out of the hands of a receiver, and delivered to the petitioners, pursuant to a decree entered in said court on the 18th July, 1866, in the case of *Soutter, &c.*, v. *The La Crosse and Milwaukee Company and Others.* Since this petition was presented a case on appeal between the parties has been heard and decided, in which it was determined that the possession of this rolling stock did not belong to the petitioners. [See *Minnesota Co.* v. *St. Paul Co.*, 6 Wall. 742.] The motion for the mandamus must, therefore, be

Denied.

Mr. C. Cushing for petitioner.

MISSISSIPPI *v.* STANTON AND GRANT.

ORIGINAL.

No. 14. Original. Argued May 15, 1867.—Decided May 16, 1867.—Opinion delivered February 10, 1868.

Dismissed on the authority of *Georgia* v. *Stanton*, 6 Wall. 50, and *Georgia* v. *Grant*, 6 Wall. 241.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

The bill is dismissed for want of jurisdiction for the reasons assigned in the case of *The State of Georgia* v. *E. M. Stanton, U. S. Grant and John Pope*, 6 Wall. 50; 241.

Dismissed.

Mr. W. L. Sharkey, Mr. R. J. Walker and *Mr. A. H. Garland* for complainant.

Mr. Attorney General for defendants.

GAINES *v.* LIZARDI.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 83. Argued January 30, February 3 and 4, 1868. — Decided April 6, 1868.

Reversed on the authority of *Gaines* v. *New Orleans*, 6 Wall. 642.

MR. JUSTICE DAVIS delivered the opinion of the court.

This case in all its essential features is like the case of the same complainant against the city of New Orleans, just decided, and the opinion delivered in that case is also decisive of this suit.

The decree of the Circuit Court of the United States for the Eastern District of Louisiana is reversed, and this cause is remanded to that court with directions to enter a decree for the complainant in conformity with the opinion in the case of *Myra Clark Gaines* v. *The City of New Orleans and others*, 6 Wall. 642.

Reversed.

Mr. C. Cushing for appellant.

Mr. James McConnell and *Mr. Miles Taylor* for appellees.

UNITED STATES *v.* COOK.

CERTIFICATE OF DIVISION OF OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 102. Argued February 12 and 13, 1868. — Decided February 24, 1868.

United States v. *Hartwell*, 6 Wall. 385, followed.
The indictment in this case is sufficient.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This case was certified up to this court from the Circuit Court of the United States for the Southern District of Ohio, — the opinions of the judges of that court being opposed upon the points set forth in the certificate.

The first and third questions presented for our consideration are fully met by the opinion just delivered in the case of *The United States* v. *Hartwell*, 6 Wall. 385.

In accordance with that opinion they will be answered in the affirmative.

The second question relates to the sufficiency of the indictment in the particulars mentioned. We are of opinion that the indictment is sufficient. We deem this proposition so plain that any discussion of the subject is unnecessary.

This question will be answered accordingly.

The record shows that there is no foundation for the fourth question. It does not arise upon the indictment, and was abandoned by the defendant's counsel in the argument at the bar.

This question, therefore, needs no answer.

Mr. Attorney General and *Mr. J. Hubley Ashton* for plaintiff.

Mr. H. Hunter for defendant.

HUNT *v.* BENDER.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

No. 103. Submitted March 13, 1868.—Decided March 30, 1868.

Several judgments severally held by different complainants who unite in the prosecution of a creditor's bill, cannot be added together to make the amount necessary to give this court appellate jurisdiction.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The object of the writ in the territorial court was to subject certain property to the satisfaction of certain judgments. The bill of the complainants, now appellants, was dismissed, and they now prosecute this appeal for the reversal of that decree.

The judgments set up by the complainants were several, and neither of them was for an amount exceeding two thousand dollars; and it was decided at the last term in the case of *Seaver* v. *Bigelows*, 5 Wall. 208, that several judgments severally held by different complainants who unite in the prosecution of a creditors' bill cannot be added together in order to make the amount exceeding two thousand dollars, which is necessary in order to enable the court to take appellate jurisdiction.

The appeal must therefore be

Dismissed for want of jurisdiction.

Mr. Reddick and *Mr. Briggs* for the appellants.

Mr. J. H. Reynolds for the appellees.

UNITED STATES *v.* BALES OF COTTON MARKED J. H. B.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 146. Argued March 26, 1868.—Decided March 30, 1868.

Reversed on the authority of *Union Ins. Co.* v. *United States*, 6 Wall. 759.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The libel in the Circuit Court was filed under the act of August 6, 1861, and stated a case of seizure on land.

In conformity, therefore, with the principles settled in the case of *The Union Insurance Company* v. *The United States*, the decree of the Circuit Court must be reversed as irregular, and the cause remanded for a new trial, conformed, in respect to trial by jury and exceptions to evidence, to the course of the common law.

Reversed.

Mr. Attorney General and *Mr. J. Hubley Ashton* for the appellants.

No appearance for appellee.

WILLIAMSON *v.* MOORE.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

No. 421. Argued February 14, 1868. — Decided April 6, 1868.

Williamson v. *Suydam*, 6 Wall. 723, followed.

MOTION TO DISMISS. The case is stated in the opinion.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

The facts of the case are substantially the same as in the case just decided. *Williamson* v. *Suydam*, 6 Wall. 723.

The case, among other things, alleges that the act of April 1, 1814, was unconstitutional and void, as impairing the obligation of contracts.

Judgment of the state court was to the contrary in express terms, as appears in the record. *Motion overruled.*

Mr. David Dudley Field for plaintiffs in error.

Mr. H. E. Davies for defendant in error.

TILLINGHAST *v.* VAN BUSKIRK.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 32. Argued January 7 and 8, 1869. — Decided February 8, 1869.

Green v. *Van Buskirk*, 7 Wall. 139, followed.

THE case is stated in the opinion.

MR. JUSTICE DAVIS delivered the opinion of the court.

This case is in all respects like the case of *Green* v. *Van Bus-*

kirk, 7 Wall. 139, decided at this term, and no separate opinion is necessary.

The judgment of the Supreme Court of the State of New York is reversed, and the cause is remitted to that court, with directions to enter judgment for the plaintiffs in error.

Reversed.

Mr. Amasa J. Parker and *Mr. Lyman Trumbull* for plaintiffs in error.

Mr. J. S. Black, Mr. J. M. Carlisle, Mr. J. B. Gale and *Mr. J. K. Porter* for defendants in error.

BURBANK *v.* BIGELOW.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 36. Argued and submitted March 26, 1868. — Decided January 11, 1869.

After a cause is at issue, and on the day when it is set for trial before a jury, it is too late to take a peremptory exception that a partner with plaintiff in the transaction sued on is not a party plaintiff.

An objection in an action at law that the matter of plaintiff's demand is one of equitable cognizance in Federal courts cannot be taken for the first time in this court.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

The case of *Breedlove* v. *Nicolet and Siggs*, 7 Pet. 413, disposes of the only question raised by the record in the present case.

That was an action in the Circuit Court of the United States for the District of Louisiana, brought by Nicolet and Siggs as partners, in which, after issue taken on pleas in bar of the action, the defendants on the day set for trial filed a plea averring that Musson and others were also partners with plaintiffs, and citizens of Louisiana. The plea was stricken out by order of the court on the ground that it came too late. This court held that such action was within the discretion of the Circuit Court, and could not be revised.

In the case before us the defendant below, plaintiff in error, filed his peremptory exception after the case was at issue, and on the day that it was set for trial before a jury, praying that the suit should be dismissed, because T. S. Burbank, a partner with plaintiff in the transaction which is the foundation of this suit, was not made a plaintiff in the case. The court overruled this exception

on the ground that it came too late. We were at first inclined to distinguish the two cases under the idea that the plea in the first case rested on the citizenship of the partners not joined in the suit, who, if joined, would have defeated the jurisdiction of the court. But it is expressly said in the opinion, that "the plea is to be considered as if the averment that Musson and others were citizens of Louisiana had not been contained in it."

The point ruled in that case is identical with the one presented here, and that decision must govern this.

The objection that the matter of plaintiff's demand is one of equitable cognizance in the Federal courts cannot prevail. No such objection was raised in the court below at any stage of the proceedings, and it cannot be permitted to a defendant to go to trial before a jury on the facts of a case involving fraud, and let it proceed to judgment on the verdict without any attempt to assert the equitable character of the suit, and then raise that question for the first time in this court.

As the record raises no other question for our consideration, the judgment of the Circuit Court is *Affirmed.*

Mr. C. Cushing and *Mr. W. W. Boyce* for plaintiff in error.

Mr. Thomas J. Durant for defendant in error.

SMITH *v.* WASHINGTON GAS LIGHT CO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 86. Argued February 18, 1869. — Decided March 1, 1869.

The appellant has failed to prove the renewal of his contract with the appellee, which alleged renewal is the foundation of the remedy sought for by his bill.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This is a suit in equity to enforce the specific performance of a contract for the delivery of gas tar, and to obtain compensation in damages for partial non-performance.

The alleged contract was for the delivery of all the tar, made by the company and not wanted by it for a specific purpose, from time to time, as made and called for by the contractor, during the term of five years; and for the renewal of the contract at the end of that period for another like term. The consideration to be paid to the

company by the contractor was five hundred dollars a year in half-yearly instalments. In case of refusal to renew the company engaged to refund to the contractor the payments made during the last year.

It is unnecessary to examine the question whether, upon sufficient evidence in support of the allegations of the bill, the complainant could have relief by a decree for specific performance; for we are all of opinion that no case for relief is made by the proof.

It is not alleged that, during the first five years, the company failed in any respect to perform its contract. The main ground of complaint is that the company, after having renewed the contract for a second term of five years, failed to fulfil its stipulations.

There is much evidence on the point of renewal and it is very contradictory. We shall not enter into any minute criticism upon it.

It is clear that the company was not bound to renew except upon the request of the contractor. There could be no refusal except upon a demand. Nor was the company bound to renew even upon demand. It might still refuse; and in that case would be bound only to return to the contractor or his assignee the last year's payment of five hundred dollars.

The proof shows that the contract proved unexpectedly profitable to the contractor; and that the tar would be worth during a second term of five years, not five hundred dollars only, but over five thousand dollars a year.

It was natural that the contractor should seek a renewal; and it was equally natural that the company should be unwilling to renew except at an advanced rate, corresponding, in some degree, to the increased value.

No formal demand for renewal seems to have been made, but there appears to have been a good deal of negotiation between the parties, and some adroit attempts on the part of the contractor to obtain admissions, either in words or acts, from the officers of the company, upon which a claim that the contract had been in fact renewed might be established.

But these attempts were not successful. We are unable to find in the testimony any satisfactory evidence of a renewal of the contract. On the contrary, the whole weight of the proof shows refusal to renew except at an advanced rate, and failure on the part of the contractor to accept the terms required. Refusing to renew the contract the company was under no obligation to the contractor except to refund the five hundred dollars received from him during

the preceding year; and for the recovery of this sum the remedy of the complainant was complete at law.

The decree of the Supreme Court of the District dismissing the bill must therefore be *Affirmed.*

Mr. R. J. Brent and *Mr. R. T. Merrick* for appellant.

Mr. J. C. Kennedy and *Mr. W. B. Webb* for appellee.

FINLEY *v.* ISETT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 150. Submitted April 7, 1869.—Decided April 15, 1869.

B., who had transactions with the appellees who were bankers, delivered to them his five promissory notes secured by mortgage. The appellant was also a creditor of B. and had a claim upon the fund in the appellees' hands. *Held*, (1) That the fact that the notes were in the possession of the appellees raised a legal presumption that they were their property; (2) That the weight of the evidence was in favor of the position that the appellees were to be first paid before transferring the notes to appellants.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

In the spring of the year 1865 Sage O. Butler made and delivered to Isett & Brewster, a banking firm of Muscatine, Iowa, his five several promissory notes, for two thousand dollars each, payable to their order in one, two, three, four, and five years from date; and, at the same time, made and delivered to them a mortgage on certain real estate to secure the payment of the notes.

The plaintiff, Finley, on the 22d January, 1866, filed this bill in chancery, alleging that the notes and mortgage were deposited with Isett & Brewster, in trust for his benefit, for the purpose of securing Butler's indebtedness to him, and praying the court to declare the trust, and decree Isett & Brewster to assign to him the notes and mortgage, or for such other relief as might be appropriate. Butler is also made defendant, and all three of them required to answer specific interrogatories, under oath, touching the alleged trust.

Isett & Brewster file separate answers, and say that the notes were delivered to them as security for advances made by them to Butler, to enable him to carry on the business of packing pork, during the previous winter, and with an understanding that when their debt was paid, they would transfer the notes and mortgage to

whomsoever Butler might direct. They allege that Butler is still indebted to them in the sum of six thousand dollars, and say they are willing to transfer the securities to plaintiff on payment of that sum and interest.

There seems to be no doubt about Butler's indebtedness to Isett & Brewster, and to complainant.

The issue, therefore, is a very simple question of fact, namely, whether Isett & Brewster received the notes and mortgage from Butler as a security, primarily, for their own debt, and then subject to his order; or as a mere trust for plaintiff, without any beneficial interest in themselves.

The main reliance of plaintiff to establish the trust, is on a letter written by Butler to him, at or about the time he delivered the securities to Isett & Brewster.

In this letter Butler says: "For the purpose of protecting you to some extent against worthless securities, I executed my notes, on the 11th March, at one, two, three, four, and five years, with interest at six per cent, to order of Messrs. Isett & Brewster, and secured the same by mortgage on my pork house, and the mortgage was recorded, and Messrs. Isett & Brewster hold these notes in trust, and will, at proper time, transfer them, with mortgage, (without recourse,) to parties I may designate. When I know my exact situation, I hope to do more, but in mean time please keep the above as confidential."

Butler, whose deposition is in the record, swears that he read this letter to Brewster, at the time he delivered to him the notes and mortgage, and told him that he intended them for the benefit of plaintiff, and that Brewster assented to the arrangement, and agreed to assign them, without recourse, when requested.

In addition to this positive testimony of Butler, there is some evidence of statements not very clear or satisfactory, made by Brewster, when speaking of these securities afterwards.

The statement of Holden is, that when he asked Brewster about these notes and mortgage, he said "it was a trust matter." As this was true, whether the trust was to secure Finley first, or only for his use, after Isett & Brewster were paid, it does not prove anything in the present issue.

Higgins, another witness, says that, when he asked Brewster why he had taken the mortgage, he said he did not take it on his own account, but in trust for another. This conversation was April 18th, six days before the date of the letter from Butler to plaintiff, and is to be taken for what it is worth.

To this testimony on the part of complainant, is opposed —

1. The fact that the notes and mortgage are payable to the order of Isett & Brewster, and are in their possession, which raises the legal presumption that they are their own property.

2. The separate answers of Isett & Brewster to plaintiff's bill and interrogatories, in which they both deny the exclusive trust for plaintiff, and assert their interest to the extent of their debt.

3. Brewster denies, in his deposition, that the letter of Butler to Finley was ever read to him or by him, or that he ever gave assent to the claim of Finley.

4. Certain letters from Finley, the plaintiff, to Brewster and Butler, written in October, 1865, in regard to the matters now in controversy, in none of which does he claim that these notes are for his benefit, until after Isett & Brewster are first paid, and in one of them, dated October 20, to Butler, he says: "As I understand you and Mr. Brewster, the mortgage was given with the intention of protecting my interests as well as Mr. B. When Mr. B.'s claim was satisfied, the transfer of the property to be made to me. This is the way I understand my position now."

5. The statement of Butler, in his deposition, that, at an interview between himself and Finley and Brewster, in October, Mr. Brewster spoke of his prior claim on the notes and mortgage, and that, while Finley did not in words admit it, he made no denial of it.

We are of opinion that the weight of the evidence is clearly in favor of the statement of the defendants, that they were to be first paid out of the notes, before they were to transfer them.

The decree of the Circuit Court, giving the two notes last due to plaintiff, is therefore as favorable to him as the facts justify, and must be *Affirmed.*

Mr. George C. Bates for appellant.

Mr. William F. Brannan for appellees.

DUTTON *v.* PALAIRET.

ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

No. 184. Decided November 8, 1869.

Affirmed upon the authority of *Bronson* v. *Rodes*, 7 Wall. 229.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The same questions substantially are presented in this case as in the case of *Bronson* v. *Rodes*, 7 Wall. 229, heretofore decided at this term. The principles settled by that judgment require that the judgment of the Supreme Court of Pennsylvania be affirmed, and it is so ordered. *Affirmed.*

Mr. David W. Sellers for plaintiff in error.

No appearance for defendants in error.

UNITED STATES *v.* MOWRY.

APPEAL FROM THE COURT OF CLAIMS.

No. 186. Argued March 29, 30 and 31, 1869. — Decided April 12, 1869.

United States v. *Adams*, 7 Wall. 463, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from the Court of Claims.

The petition of Mowry sets forth that railroad cars were needed on the Pacific Railroad, in Missouri, for the transportation of men and supplies in the military department of the West, then in command of General Fremont, and that, on the 22d September, 1861, he made a contract with Chief Quartermaster McKinstry, at the head of that department under General Fremont, to construct fifty box cars and fifty platform cars, the former for $825 each, and the latter for $700 each. These cars were afterwards constructed, approved and taken into the service of the government.

The payment of the price on this contract was among many others within that military district, suspended upon allegations of fraud and irregularities committed therein, and a board of commissioners appointed to investigate them and report to the Secretary of War. The petitioner presented his claim before this board, charging the contract price, amounting to $76,250. This board, after investigation, allowed to the petitioner $58,750, and gave him a voucher for that amount, the payment of which was accepted by him from the government, as provided for by an act of Congress. The Court of Claims allowed the balance of the contract price, $17,250.

The case falls within the decision of this court just rendered in the case of *The United States* v. *Adams*, 7 Wall. 463. Under the circumstances the petitioner is concluded by the finding of the board and acceptance of payment.

The decree must be

Reversed, and the cause remanded with directions to enter a decree dismissing the petition.

Mr. Attorney General, Mr. Assistant Attorney General Dickey and *Mr. E. P. Norton* for appellant.

Mr. R. M. Corwine, Mr. J. M. Carlisle and *Mr. J. D. McPherson* for appellee.

UNITED STATES *v.* MORGAN.

APPEAL FROM THE COURT OF CLAIMS.

No. 191. Argued March 29, 30 and 31, 1869. — Decided April 12, 1869.

Reversed on the authority of *United States* v. *Adams*, 7 Wall. 463.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from the Court of Claims.

The petition in this case sets forth that Morgan, under a contract with the government, in September, 1861, purchased five hundred and twenty-two horses, for which he was to receive $130 each; that the government has refused to pay the price according to the contract, and that a balance remains of $7830. This contract was made with the petitioner by Reeside, an agent of General Fremont, who had been authorized to purchase two thousand horses for his military department, at the price above stated.

The claim was presented to the board of commissioners appointed to investigate contracts made in this department, and, after an examination into the claim, it was reduced $7830, the board allowing only $115 per head for the horses instead of $130, the contract price; and gave to the claimant a voucher for the amount at this rate, $60,076, payment of which was afterwards accepted by him from the government.

The Court of Claims decreed in his favor the contract price, deducting the above payment. The case falls within the decision of *The United States* v. *Adams*, and this decree must, therefore, be reversed.

The case is remanded with directions to dismiss the petition.

Mr. Attorney General, Mr. Assistant Attorney General Dickey and *Mr. E. P. Norton* for appellant.

Mr. J. M. Carlisle, Mr. J. D. McPherson and *Mr. R. W. Corwine* for appellees.

UNITED STATES *v.* BURTON.
UNITED STATES *v.* GEFFROY.
UNITED STATES *v.* HIGDON.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 192, 193, 197. Argued March 29, 30, 31, 1869. — Decided April 12, 1869.

Reversed on the authority of *United States* v. *Adams*, 7 Wall. 463, and *United States* v. *Morgan*, *ante*, 565.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

These are all cases of contracts made by Reeside with the claimants for the purchase of horses, under the same circumstances as stated in the case of *United States* v. *Morgan*, *ante*, 565, and must follow the same result.

The decrees of the Court of Claims in each case must be reversed, and the causes remanded, with directions to dismiss the petitions.

Mr. Attorney-General, *Mr. Assistant Attorney General Dickey* and *Mr. E. P. Norton* for appellant.

Mr. J. M. Carlisle, *Mr. J. D. McPherson* and *Mr. R. W. Corwine* for appellees.

DAVIDSON *v.* STARCHER.
SAME *v.* KING.
SAME *v.* McMAHON.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

Nos. 329, 330, 331. Argued January 8, 1869. — Decided January 11, 1869.

No question under the 25th section of the Judiciary Act having been passed upon by the court below, this court has no jurisdiction over the judgment of the state court.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

In these cases it appears, on looking into the record, that no question under the 25th section of the Judiciary Act was passed upon by the court. No ground appears, therefore, of jurisdiction in this court over the judgments of a state court, and the several writs of error must be dismissed for want of jurisdiction.

Mr. L. Allis for plaintiffs in error. *Dismissed.*

Mr. R. P. Spalding for defendants in error.

MOULDER *v.* FORREST.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 371. Argued February 5, 1869. — Decided February 15, 1869.

A writ of error is fatally defective if it lacks the test required by law, and the defective writ cannot be amended here.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The motion to dismiss the writ of error for want of the test required by the process act of 1789, 1 U. S. Stat. 93, must be allowed. The defect in the test was doubtless occasioned by an oversight of the clerk below; but a majority of the court is of the opinion that the writ cannot be amended here without departure from its established practice. *Insurance Company* v. *Mordecai*, 21 How. 195; *Porter* v. *Foley*, 21 How. 393. *Dismissed.*

Mr. Nathaniel Wilson for plaintiff in error.

Mr. W. S. Cox for defendant in error.

EX PARTE PARGOUD.

ORIGINAL.

No. 9. Original. Argued February 18, 1870. — Decided February 28, 1870.

A writ of mandamus to the Court of Claims is granted on the authority of *Ex parte Zellner*, 9 Wall. 244.

PETITION for mandamus to the judges of the Court of Claims. The case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a petition on behalf of Pargoud, the relator, for a mandamus to the Court of Claims to compel them to allow an appeal from a decree against him in that court.

The case falls within the *Case of Zellner*, 9 Wall. 244, and the motion must be granted.

Motion for a peremptory mandamus granted.

Mr. Thomas J. Durant for petitioner.

Mr. Robert S. Hale for respondent.

BURLINGTON AND MISSOURI RIVER RAILROAD CO. *v.* MILLS COUNTY.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 39. Ordered to be submitted to abide decision in No. 40, February 2, 1870.—Decided February 7, 1870.

Railroad Co. v. *Fremont County*, 9 Wall. 89, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Supreme Court of the State of Iowa.

The pleadings and proofs present the same questions involved in the case of the same plaintiffs against Fremont County, and must be disposed of in the same way.

The decree of the court below affirmed.

Mr. D. Rover for plaintiff in error.

Mr. T. Ewing for defendant in error.

WILLARD *v.* WILLARD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 90. Argued February 25, 1870.—Decided March 7, 1870.

Willard v. *Presbury*, 14 Wall. 676, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from the Supreme Court of the District of Columbia.

The bill is, substantially, the same as in the case of *Willard* v. *Presbury*, 14 Wall. 676; and the proofs the same. The decision in that case governs this. (See opinion.)

Reversed.

Mr. W. D. Davidge and *Mr. W. F. Mattingly* for appellant.

Mr. R. T. Merrick and *Mr. R. J. Brent* for appellees.

UNITED STATES *ex rel.* AMY *v.* BURLINGTON.
UNITED STATES *ex rel.* LEARNED *v.* BURLINGTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

Nos. 94 and 95. Argued November 30, 1869.—Decided January 24, 1870.

Butz v. *Muscatine*, 8 Wall. 575, followed.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court in these causes.

Upon examination these cases are found to be substantially the same with the case of *The United States on the relation of Thomas Butz* v. *The City of Muscatine*, No. 93, heretofore decided by this court at the present term. (8 Wall. 575.) Our opinion is the same as in that case. The judgment in each of these cases is therefore reversed, and the cause remanded to the court below for further proceedings in conformity to the views of this court as expressed in the case referred to. *Reversed.*

Mr. James Grant for plaintiffs in error.

No appearance for defendants in error.

FLANDERS *v.* TWEED.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 108. Argued March 8 and 9, 1870.—Decided March 21, 1870.

Flanders v. *Tweed*, 9 Wall. 425, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Louisiana.

The suit was brought by Tweed in the court below against Flanders to recover one hundred and twenty-three bales of cotton.

The answer of the defendant states that he was a deputy general agent of the Treasury Department of the United States; denies that the cotton belonged to the plaintiff, but was the property of the United States; that the cotton was shipped to him as such at New Orleans, with other lots, by a treasury agent at Shreveport, under a contract with the plaintiff and the Treasury Department, in relation to cotton known as Confederate States cotton, captured in war and turned over to the Treasury Department by officers of the army; that by virtue of this contract, and certain services rendered by the plaintiff, three-fourths of the number of bales received by the defendant were to be turned over to him, and one-fourth reserved to the United States; that the one hundred and twenty-three bales in suit are the one-fourth thus reserved; and that the three hundred and seventy-two bales claimed by the

plaintiff in his suit, No. 3872 of the docket of the court, are the three-fourths coming to the plaintiff under the contract. The defendant also claims that the one hundred and twenty-three bales in question are captured or abandoned property.

A large amount of evidence was taken in the cause on both sides upon the issues thus raised. The cotton had been sequestered and delivered to the plaintiff on his giving a bond as security for the same. The court rendered a judgment for the plaintiff. It was rendered on the 29th January, 1868. A statement of facts is found in the record, at p. 83, by the judge, filed May 13, 1868, some three months and a half after the rendition of the judgment.

This case, therefore, falls within the views expressed in the suit between these parties involving the question of damages for the detention of these one hundred and twenty-three bales of cotton, together with the three hundred and seventy-two bales disposed of in a previous suit in the court below against the defendant, referred to in his answer, the opinion in which has just been delivered. 9 Wall. 425.

For the reasons given in that case the judgment must be

Reversed for a mistrial, and the cause remanded for a new trial.

Mr. Attorney General and *Mr. Assistant Attorney General Field* for plaintiff in error.

Mr. J. Hubley Ashton, *Mr. T. D. Lincoln* and *Mr. E. C. Billings* for defendant in error.

WEED *v.* CRANE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 123. Submitted March 15, 1870. — Decided April 4, 1870.

There being no exception to a ruling or to anything which took place at the trial, there is nothing in the record to be reviewed, and the judgment below is affirmed.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

On looking into the record of this cause we find no exception to any ruling of the court upon the trial, nor any exception to the report of the assessor, nor to any ruling of the court in relation to it. There is nothing, therefore, in the record which can be reviewed here upon error; and the judgment of the Circuit Court must be

Affirmed.

Mr. J. B. Robb for plaintiffs in error.

Mr. F. A. Brooks for defendant in error.

SUPERVISORS *v.* DURANT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 134. Argued and submitted March 18, 1870. — Decided April 4, 1870.

Affirmed on the authority of *Supervisors* v. *Durant*, 9 Wall. 415.

THE case is stated in the opinion.

MR. JUSTICE STRONG delivered the opinion of the court.

All the questions raised by this record have been considered and disposed of in the opinion filed in No. 133. For the reasons stated in that opinion this judgment must be affirmed.

The judgment of the Circuit Court is *Affirmed with costs.*

Mr. H. Strong for plaintiffs in error.

Mr. James Grant for defendant in error.

WASHINGTON COUNTY *v.* UNITED STATES *ex rel.* MORTIMER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 137. Argued and submitted March 18, 1870. — Decided April 4, 1870.

Affirmed on the authority of *Supervisors* v. *Durant*, 9 Wall. 415.

MR. JUSTICE STRONG delivered the opinion of the court.

This case differs in no essential particular from No. 133 decided at this term. For the reasons given in the opinion filed in that case this judgment must be affirmed.

The judgment of the Circuit Court is *Affirmed with costs.*

Mr. H. Strong for plaintiffs in error.

Mr. James Grant for defendant in error.

NORTHERN BELLE *v.* ROBSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 141. Argued March 21, 1870. — Decided April 11, 1870.

It is the duty of a carrier who offers barges for service to have them often examined and thoroughly inspected, so as to be sure of their condition.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

In this case the same parties as in the case just decided, (*The Northern Belle*, 9 Wall. 526,) about a month later made another contract for the carrying of wheat in the same barge Pat Brady for the same voyage, the barge being this time attached to the steamboat Northern Belle.

After the accident of the 12th May, which we have just considered in the other case, the barge was merely repaired by removing a plank or two which seemed to be injured, and replacing them by others. In two or three days she was again in use, and on the 19th June took on board another cargo for Robson.

Very soon after leaving Hastings the barge was run on a sand-bar, and soon commenced leaking, so that the wheat was wet and greatly damaged. For this Robson recovered a decree in the District Court, which was affirmed on appeal to the Circuit Court.

Much testimony was taken to show that, owing to the violent wind and the condition of the channel, this running of the barge on the sand-bar was inevitable. It is not necessary to inquire whether this were so, for we are satisfied that the loss would not have occurred if the barge had been sound and fit for the voyage. It was the rotten condition of her timbers, as shown by the same testimony that we have commented on in the former case, that rendered her unable to resist the ordinary pressure which such accidents subject barges to every day.

We do not deem it necessary to go into the testimony on this further than to remark that the failure of the owners of the Pat Brady to have her thoroughly inspected after the first accident is without excuse.

She was then an old barge, and the circumstances of that accident should have suggested a suspicion of her condition.

But we do not place the decree on the ground of special want of care in that particular. It is the duty of the carrier who offers these barges for service to have them often examined and thoroughly inspected so as to be sure of their condition. He should not use a barge after she has become, from age, or decay, or injury, unfit for use, and should repair them often and well, so long as they can by repairing be safely used, and no longer.

For this the best interest of all parties requires that he shall be held rigidly responsible.

The decree of the Circuit Court is affirmed.

Mr. J. W. Cary for appellants.

Mr. N. J. Emmons for appellee.

KENOSHA *v.* LAMSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No. 143. Argued March 22 and 23, 1870. — Decided April 4, 1870.

Knox County v. *Aspinwall*, 21 How. 539, followed.
The City v. *Lamson*, 9 Wall. 477, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Wisconsin.

This was an action of assumpsit upon 516 coupons against the City of Kenosha, described in the declaration and notice accompanying it. They were all given in evidence, and when the plaintiff rested, the counsel for the defendants prayed the court to instruct the jury that the bonds, as well as the coupons, should have been given in evidence, which was refused. And further, that the city possessed no authority to issue the bonds, which was also overruled. The verdict was for the plaintiff.

The first question was decided against the plaintiff in *Knox County* v. *Aspinwall*, 21 How. 539, and the second in a case at the present term between the same parties. *The City* v. *Lamson*, 9 Wall. 477. *Judgment affirmed.*

Dissenting, MR. JUSTICE MILLER.

Mr. J. W. Cary for plaintiff in error.

Mr. M. H. Carpenter for defendant in error.

LONG *v.* PATTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 196. Argued April 25, 1870. — Decided April 30, 1870.

Little v. *Herndon*, 10 Wall. 26, followed.
In Illinois, a will probated in Virginia is as available in proof as if probated in Illinois.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the Northern District of Illinois.

The suit in ejectment in this case was brought by Mrs. Patton

against Long and others, to recover possession of the south half of section 22, township 27 north, range 13 west. The plaintiff gave in evidence a patent to Robert Hord, including the premises, dated November 1, 1839, and a deed from Hord to John M. Patton, and the will of Patton, by which the lot in question was devised to the plaintiff, and rested.

The defendant offered in evidence a deed from the sheriff of the county of Iroquois to L. M. Peck, including the premises in question, dated July 1, 1864, which purported to be a deed upon a sale for taxes; a deed from Peck and wife to B. L. T. Bourland, dated July 1, 1864; and from Bourland and wife to Isaac Underhill, dated April 29, 1865, and then offered in evidence five tax certificates of payment of taxes on the lot for the year therein mentioned, stating that his object in offering said evidence was to show title to the premises, and to require the payment of said taxes by the plaintiff, in case he questioned the title of Underhill under the statute. But the court held that the defendants had not brought themselves within the act of February 21, 1861, to which ruling there was an exception.

All the questions presented in this case have been disposed of in the case of *Little* v. *Herndon*, except as to the admission of the will of J. M. Patton. The only one material point to notice is that it was not properly proved or probated. But the proofs are conclusive that it was proved in the Circuit Court of the city of Richmond, Virginia, agreeably to the laws of that State, and according to the laws of Illinois, the will was as available in proof there as if probated in that State. *Judgment affirmed.*

Mr. B. C. Cook for plaintiffs in error.

Mr. Conway Robinson for defendant in error.

UNDERHILL *v.* HERNDON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 197. Argued April 25, 1870. — Decided April 30, 1870.

Little v. *Herndon*, 10 Wall. 26, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court

This is a writ of error to the Circuit Court of the United States for the Northern District of Illinois.

This is a suit in ejectment against Underhill, in the court below,

to recover possession of the southwest quarter of the northeast quarter, and the south half of the northwest quarter, section 26, township 27 north, range 13 west.

The opinion in the case of *Little* v. *Herndon* disposes of all the questions raised and decided in this case in the court below.

Judgment affirmed.

Mr. B. C. Cook for plaintiff in error.

Mr. Conway Robinson for defendant in error.

STURTEVANT *v.* HERNDON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 198. Argued April 25, 1870.— Decided April 30, 1870.

Little v. *Herndon*, 10 Wall. 26, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the Northern District of Illinois.

This suit in ejectment was brought by Herndon against Sturtevant, in the court below, to recover possession of the southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 26, township 27 north, range 13 west. The opinion in *Little* v. *Herndon*, 10 Wall. 26, disposes of all the questions in this case. *Judgment affirmed.*

Mr. B. C. Cook for plaintiff in error.

Mr. Conway Robinson for defendant in error.

UNDERHILL *v.* PATTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 199. Argued April 25, 1870. — Decided April 30, 1870.

Little v. *Herndon*, 10 Wall. 26, followed.
Long v. *Patton*, *ante*, 573, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the Northern District of Illinois.

The suit in ejectment was brought by Mrs. Patton against Under-

hill, in the court below, to recover possession of the south half of section 22, township 27 north, range 13 west.

All the questions in this case are disposed of in the cases of *Little* v. *Herndon*, 10 Wall. 26, and *Long* v. *Patton*, *ante*, 573.

Judgment affirmed.

Mr. B. C. Cook for plaintiff in error.

Mr. Conway Robinson for defendant in error.

SUPERVISORS *v.* UNITED STATES *ex rel.* DURANT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 202. Submitted April 25, 1870. — Decided April 30, 1870.

There being no error, the judgment of the court below is affirmed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is a writ of error to the Circuit Court of the United States for the District of Iowa.

The writ of error brings up the petition of the relator for an alternative writ of mandamus to the Supervisors of Poweshiek County, commanding them to levy a tax sufficient to pay a judgment against the county; a return, demurrer to the same, judgment sustaining demurrer; a writ of peremptory mandamus, and leave granted till next term to make a sufficient return to peremptory mandamus; or, if not, that an attachment issue returnable forthwith.

We perceive no error in the proceedings, and the judgment for peremptory mandamus is *Affirmed.*

Mr. S. V. White for plaintiff in error.

Mr. James Grant for defendant in error.

GODBE *v.* TOOTLE.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 258. Argued April 22, 1870. — Decided April 30, 1870.

This court will not review a judgment in favor of a firm, if the writ of error does not name the persons who compose it.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This is a motion to dismiss the writ of error by which the cause is brought here from the Supreme Court of the Territory.

The writ of error describes the judgment as rendered in favor of Tootle, Leach & Co., without naming the persons who composed the firm. But it has been often held that such a writ is irregular and that this court will not undertake to review a judgment thus described. The cases are cited in *Mussina* v. *Cavazos*, 6 Wall. 355, and need not be more particularly referred to.

The motion to dismiss the writ must be allowed.

Mr. A. G. Thurman, *Mr. R. N. Baskin*, *Mr. T. W. Bartley*, and *Mr. F. P. Stanton* for the motion.

Mr. J. M. Carlisle and *Mr. John Titus* opposing.

McCOLLUM *v.* HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 344. Argued February 4, 1870. — Decided March 7, 1870.

This court will not take jurisdiction over an interlocutory decree.

Mr. Justice Field delivered the opinion of the court.

The decree in this case, made on the twenty-sixth day of May, 1869, is interlocutory and not final. The appeal from it must, therefore, be dismissed. *Ordered accordingly.*

Mr. S. W. Fuller, *Mr. B. C. Cook*, *Mr. Thomas F. Withrow*, for appellants.

Mr. James Grant for appellees.

UNITED STATES *v.* POLLARD.
UNITED STATES *v.* KOHN.
UNITED STATES *v.* STANTON.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 391, 359, 390. Argued February 8, 9, 10, 1870. — Decided February 28, 1870.

Affirmed on the authority of *United States* v. *Anderson*, 9 Wall. 56.

The case is stated in the opinion.

Mr. Justice Davis delivered the opinion of the court.

There are no material points of difference between these cases and the case of *The United States* v. *Anderson*, 9 Wall. 56, decided at this term, and the views presented in that case dispose of these.

The judgment of the Court of Claims in each of the above-named cases is *Affirmed.*

Mr. Attorney General and *Mr. R. S. Hale* for appellant.

Mr. A. G. Riddle for Pollard, *Mr. J. A. Wills* for Kohn, and *Mr. George Taylor* for Stanton.

RILEY *v.* WELLES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 397. Submitted February 14, 1870.— Decided March 7, 1870.

Wolcott v. *Des Moines Co.*, 5 Wall. 681, followed.

THE case is stated in the opinion.

MR. JUSTICE NELSON delivered the opinion of the court.

This is an appeal from the Circuit Court of the United States for the District of Iowa.

This case is not distinguishable from that of *Wolcott* v. *The Des Moines Company*, 5 Wall. 681.

Welles, the plaintiff below, derives his title by deed from this company, the same as Wolcott in the former case. The suit in that case was brought to recover back the consideration money from the Des Moines Company, the grantors, on the ground of failure of title. The court held that Wolcott received a good title to the lot in question under his deed.

In that case it was insisted that the title was not in the Des Moines Company, but in the Dubuque and Pacific Railroad Company.

In the present case the defendant claims title under, and in pursuance of, the preëmption act of September 4, 1841.

Her husband took possession of the lot in 1855, and she was permitted by the register to prove up her possession and occupation, May, 1862. The patent was issued October 15, 1863.

It will appear from the case of *Wolcott* v. *The Des Moines Company* that the tract of land, of which the lot in question was a part, had been withdrawn from sale and entry on account of a difference of opinion among the officers of the land department as to the extent of the original grant by Congress of lands in aid of the improvement of the Des Moines River, from the year 1846 down to the resolution of Congress of March 2, 1861, and the act of July 12, 1862, which acts we held confirmed the title in the Des Moines Company. As the husband of the plaintiff entered upon the lot in 1855 without right, and the possession was continued without right, the permission of the register to prove up the possession and

improvements, and to make the entry under the preëmption laws, were acts in violation of law, and void, as was also the issuing of the patent.

The reasons for this withdrawal of the lands from public sale or private entry are stated at large in the opinion in the case of *Wolcott* v. *The Des Moines Company*, and need not be repeated. The point of reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it. *The decree below affirmed.*

Mr. Thomas F. Withrow, *Mr. Galusha Parsons*, and *Mr. William H. Kelsey* for appellant.

Mr. Edwin C. Litchfield for appellee.

EX PARTE WAPLES.

ORIGINAL.

No. 10. Original. Argued December 19, 20, 1870. — Decided January 9, 1871.

Ex parte Graham, 10 Wall. 541, followed.

PETITION for writ of prohibition. The case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

The facts are the same in this case, and the same questions are involved, as in the preceding case of *Ex parte Graham and Day*, No. 9, just decided, 10 Wall. 541, and this case is disposed of in the same way. The same entry will be made in both cases.

Mr. Thomas J. Durant for petitioner.

Mr. Caleb Cushing opposing.

GARNETT *v.* UNITED STATES.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 15. Reargued February 8, 9, 1871. — Decided March 6, 1871.

Garnett v. *United States*, 11 Wall. 256, followed.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This also is a writ of error to the Supreme Court of the District of Columbia.

The record discloses the same error which has been considered in the preceding case, No. 14, and the same results must follow.

Mr. Caleb Cushing for plaintiff in error.

Mr. Attorney General for defendant in error.

STEVENS *v.* DE AUBRIE.
STEVENS *v.* BELLEMARDE.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

Nos. 45 and 46. Argued and submitted November 16, 1870. — Decided December 6, 1870.

Smith v. *Stevens*, 10 Wall. 321, followed.

THE case is stated in the opinion.

MR. JUSTICE DAVIS delivered the opinion of the court.

These cases are, in all respects, like the case of *Smith* v. *Stevens*, 10 Wall. 321, decided at this term, and the judgment of the Supreme Court of Kansas in each of them is affirmed.

Mr. J. R. Doolittle, *Mr. J. W. Denver* and *Mr. James Hughes* for plaintiff in error.

Mr. J. S. Black for defendants in error.

UNITED STATES *v.* HODSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

No 52. Argued November 17, 1870. — Decided December 6, 1870.

United States v. *Hodson*, 10 Wall. 395, followed.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This is also a writ of error to the Circuit Court of the United States for the District of Wisconsin.

The record presents the same questions which have just been decided in the case of the *United States* v. *Hodson*, No. 50, 10 Wall. 395. The result in this case must be the same.

The judgment below is reversed and the cause will be remanded with directions to issue a *venire de novo*. *Reversed.*

Mr. Attorney General for plaintiff in error.

Mr. M. H. Carpenter for defendants in error.

UNITED STATES *v.* MYNDERSE.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

No. 237. Submitted November 14, 1871. — Decided November 27, 1871.

United States v. *Hodson*, 10 Wall. 395, followed.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This case comes before us on a certificate of division of opinion from the Circuit Court of the United States for the Northern District of New York.

The answers to the questions certified must be given according to the opinion of this court, delivered at a former day in this term, in the case of the *United States* v. *Hodson*, 10 Wall. 395. That opinion, to which it is needless to refer further, requires that the first question certified to us be answered in the negative, and the second in the affirmative, and they are so answered.

Mr. Attorney General, Mr. Solicitor General and *Mr. Assistant Attorney General Hill* for plaintiff.

No appearance for defendants.

VAN SLYKE *v.* WISCONSIN.
BAGNALL *v.* SAME.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

Nos. 261 and 262. Argued November 15, 1871.—Decided November 27, 1871.

The right of a State to tax shares of stockholders in national banking associations within its limits is affirmed.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The judgment of the Supreme Court of the State of Wisconsin, which asserts the right of that State to tax the shares of stockholders in national banking associations within its limits, is affirmed. The case before us is governed by the cases of *National Bank* v. *Commonwealth*, 9 Wall. 353, in which this court affirmed the judgment of the Court of Appeals of Kentucky, and *Lionberger* v. *Rouse*, 9 Wall. 468, in which we affirmed the judgment of the Supreme Court of Missouri on questions substantially the same as those in this case. We think it unnecessary to restate the reasons by which those decisions were sustained. *Affirmed.*

Mr. S. U. Pinney for plaintiffs in error.

Mr. S. S. Barlow and *P. L. Spooner* for defendant in error.

COUSIN *v.* GENERES.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 286. Argued November 17, 1871.—Decided November 20, 1871.

Bethell v. *Demaret*, 10 Wall. 537, followed.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

I am instructed by the court to say that the decision in *Bethell* v. *Demaret*, 10 Wall. 537, decided at this term, is regarded as governing this case.

The writ of error must therefore be dismissed.

Mr. P. Phillips for plaintiff in error.

Mr. Louis Janin for defendants in error.

EX PARTE LOUD.

ORIGINAL.

No. 8. Original. Argued January 26, 1872. — Decided March 25, 1872.

Ex parte McNiel, 13 Wall. 236, followed.

PETITION of a writ of prohibition to the District Court of the United States for the Eastern District of New York. The case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This case differs in no material particular from the case of the like application by *Alexander McNiel* just decided, 13 Wall. 236. The same considerations apply, and the result must be the same.

The application is denied and the petition dismissed.

Mr. C. Donohue for petitioner.

Mr. F. A. Wilcox for respondent.

HOLMES *v.* SEVIER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 31. Argued and submitted November 8, 1871. — Decided May 6, 1872.

The liability of the maker of a note given for the purchase of slaves before the civil war was not affected by their emancipation.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This is an appeal in equity from the decree of the Circuit Court of the United States for the Eastern District of Arkansas.

The bill was filed by the appellants to enforce the payment of the balance due upon a promissory note, bearing date on the 25th of December, 1856, made by John A. Jordan, since deceased, to Robert Ryan, also since deceased, for ten thousand dollars, payable on the first of January, A. D. 1860, with interest at the rate of ten per cent per annum from date until paid. The note

was secured by a mortgage, and is averred to have been given for the purchase money of slaves subsequently emancipated by the government of the United States. The defendants demurred to the bill. The demurrer was sustained and the bill dismissed. The opinion of the court was confined to the effect of the emancipation of the slaves upon the validity of the note. The judgment proceeded upon that ground. The views of this court upon that subject were fully expressed in *Osborn* v. *Nicholson*, 13 Wall. 654, recently decided at this term, and they are decisive of this case.

In accordance with those views the decree of the court below is reversed, and the case will be remanded to the Circuit Court with directions to proceed in conformity to the opinion of this court.

Reversed.

Mr. P. Phillips and *Mr. S. F. Clark* for appellants.

Mr. George C. Watkins and *Mr. U. M. Rose* for appellees.

JACOWAY *v.* DENTON.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 47. Submitted November 14, 1871.—Decided April 1, 1872.

Sevier v. *Haskell*, 14 Wall. 12, followed.

THE case is stated in the opinion.

MR. JUSTICE SWAYNE delivered the opinion of the court.

This case is also before us upon a motion to dismiss the writ of error for want of jurisdiction.

The defendant in error brought suit in the Circuit Court of Yell County to the September term, 1866, upon the writing obligatory executed to him by William D. Jacoway, deceased, on the 4th of October, 1860, for the sum of $4500 payable one year from date, with interest at the rate of ten per cent per annum from the maturity of the obligation until its payment. The administrator interposed three pleas:

(1) That the consideration of the obligation was the purchase of slaves, and that they were all emancipated by the constitution of Arkansas adopted in 1864.

(2) That the slaves were emancipated by an amendment to the Constitution of the United States, and that the consideration of the obligation thereby wholly failed.

(3) That the contract was originally null and void.

The plaintiff demurred. The court sustained the demurrers and gave judgment against the defendant for the amount claimed in

the declaration. The defendant appealed to the Supreme Court of the State, and that court affirmed the judgment.

After what we have said in *Sevier* v. *Haskell*, 14 Wall. 12, just decided, it is sufficient to remark that the record discloses no question cognizable by this court.

The writ of error is therefore dismissed.

Mr. A. H. Garland and *Mr. P. Phillips* for plaintiffs in error.

No appearance for defendant in error.

PLANT *v.* STOVALL.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

No. 82. Submitted January 22, 1872.—Decided February 5, 1872.

There being no error the judgment is affirmed.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

We find no error in the record.

The judgment of the Supreme Court of Georgia is, therefore,

Affirmed.

Mr. S. W. Johnston and *Mr. Joseph P. Carr* for plaintiff in error.

No appearance for defendant in error.

THE DES MOINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

No. 108. Argued February 29 and March 1, 1872.—Decided March 25, 1872.

The District Court in a libel in Admiralty for collision, having adjudged both vessels to be in fault, and only one having appealed, the only question here is as to the fault of the appealing vessel; and on the evidence the court holds it to have been in fault.

THE case is stated in the opinion.

MR. JUSTICE DAVIS delivered the opinion of the court.

This is a case of collision between the steamers Katie and Des Moines while navigating the Ohio River on the night of the 22d of November, 1864. The Katie was descending and the Des Moines ascending the river, when, near the head of Diamond Island, they came in contact, and the Katie immediately sank and became a total loss. The District Court adjudged both vessels to be in fault, and the Circuit Court, on appeal, affirmed this judgment.

As the owners of the Katie did not appeal from this decision, the only question for investigation here is, whether the Des Moines was in fault. As is usual in cases of this character, there is a conflict of testimony between the officers and crew of the two boats on important points, but the physical facts of the case establish the proposition that on the disputed point of most significance the Des Moines was blamable. The Des Moines, following the course of the channel, had crossed over from the foot of Diamond Island toward the Indiana shore, and being an ascending boat, according to the well-settled rules of navigation, had the choice of position in the river. This choice was taken by blowing two whistles, which told the officers of the Katie that she intended to keep along the Indiana shore which was to her larboard, while the Kentucky or Diamond Island shore was to the larboard of the Katie. The Des Moines, instead of keeping to the larboard, as her signal indicated, was at the time of the collision turned to the starboard. This is proved by the nature of the injuries received by both boats, the injury to the Katie being on her starboard side, while the Des Moines was struck on her larboard bow. If, as is claimed for the Des Moines, she had gone to the larboard until she got close to the Indiana shore, and then, as her pilot says he kept her "straight in the river," and while in that position the Katie came down on to her, this could not have happened; for if the Katie struck her on the larboard, the larboard side of both boats would have been injured, and if on her starboard, then the starboard side of both boats would have been injured; but if both boats were heading toward the Kentucky shore, the one coming down and the other going up, and a collision ensued, it would have brought the starboard of the one in contact with the larboard of the other. This was what occurred in this case, and shows clearly that the Des Moines did not obey her own signals, and was, therefore, chargeable with negligence.

It is unnecessary to consider whether the Des Moines is not blamable in other particulars, for this change of course, being the proximate cause of the collision, is enough to condemn her.

It is insisted on the part of the appellant that there was not sufficient effort to raise the Katie after the accident, and that the Des Moines should not be visited with the consequences of this neglect. But there is no proof that the Katie could have been raised if an earlier effort had been made. If full effect be given to the evidence on this subject, it may tend to create a suspicion that the owners of the Katie did not engage the wrecker soon enough, but

it does nothing more. Leezer, the wrecker, who had to stop work on account of the rise in the river, is unable to tell the condition of the river for the two previous weeks, nor can he say whether his business would have been interrupted had he commenced proceedings ten days before. It would seem as if an intelligent river man ought to have known these things, but in the absence of proof on these points, there is no data on which to base a conclusion that an earlier effort would have been successful, and there is no pretence after the work was begun that it was not continued long enough. *The decree of the Circuit Court is affirmed.*

Mr. John A. Wills, Mr. J. H. Rankin and Messrs. Lander & Merriman for appellant.

Mr. F. A. Dick and *Mr. James O. Broadhead* for appellees.

THE ST. JOHN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 131. Argued March 6, 1872. — Decided April 1, 1872.

On a question purely of fact the court finds the St. John in fault, and decrees accordingly.

THE case is stated in the opinion.

MR. JUSTICE BRADLEY delivered the opinion of the court.

Abraham E. Hasbrouck, the libellant in this case, was the owner of a barge called the Ulster County, which was sunk in the Hudson River near West Point, on the 20th November, 1864, by collision with the steamer St. John, whilst said barge was in tow of the steam propeller Pluto. The libel was filed against the steamer to recover damages for the injury sustained. The St. John was a large passenger steamer, on her downward trip from Albany to New York; the Pluto was moving up the river with the barge Ulster County lashed to her larboard side, and another barge to her starboard side, and a canal boat astern of the latter. The collision took place about three o'clock in the morning in a clear moonlight night. At West Point there is an abrupt bend in the Hudson River, making nearly a right angle. Below this bend its course is southerly; above it, proceeding up the river, it is westerly for nearly a mile, and then northerly. The Pluto with her tows was still below the point, proceeding slowly up the river, nearer to the eastern than to the western shore, when the St. John was discovered up the western reach of the river. The St. John blew two whistles, signifying that she would go to the

left or eastward of the Pluto. The men on the Pluto say that the signal was answered by two whistles on their part, and that the helm was put to starboard accordingly, turning the head of the Pluto more to the west. The collision took place directly off West Point, at the abrupt bend of the river, about the middle of the channel. The St. John struck the larboard bow of the barge Ulster County, and cut into her about ten feet. The witnesses for the libellant, the pilot and others, say that when the St. John approached them, she seemed to sheer to the west, and thus ran into the tow. This is denied on the other side.

On the part of the St. John it is testified by the pilot and wheelman that they discovered the light of the Pluto below West Point, over the land, as they, the St. John, rounded Magazine Point, where the river turns to the east; and that they kept the helm of the St. John hard astarboard until the collision occurred, thus keeping up all the time a sheer to the eastward. This could not have been so, for it would have carried the St. John to the east side of the channel; whereas it is conceded that the collision occurred in about mid-channel. The St. John selected her own course; instead of going to the right of the Pluto, as is usual, she concluded to go to the left, miscalculating the precise position of the Pluto, and supposing her to be nearer to the western shore than she was. Having selected her course, the St. John ought to have kept far enough to the eastward, or left, to be sure of avoiding a collision. Instead of this, she kept in the middle of the channel, evidently expecting the propeller to keep out of her way. In rounding the point she hugged too near, and did not give the Pluto a chance to get inside of her.

The case is purely one of fact, and it can serve no instructive purpose to review the evidence in detail. We have carefully examined it, and are satisfied that the result reached by the District and Circuit Courts was correct.

The decree of the Circuit Court is affirmed, with interest on the amount.

Mr. Charles Jones for appellant.

Mr. C. Donohue and *Mr. C. Swan* for appellee.

GERMAIN *v.* MASON.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF MONTANA.

No. 290. Argued April 5, 1872. — Decided April 22, 1872.

Writs of error from this court must bear the test of the Chief Justice.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

The writ of error in this case, as in the case of *Wells* v. *McGregor*, 13 Wall. 188, decided at this term, bears the test of the clerk of the Supreme Court of the Territory of Montana and not the test of the Chief Justice of this court.

It must therefore be dismissed.

Mr. A. M. Woodfolk, *Mr. F. A. Dick* and *Mr. George G. Wright* for plaintiffs in error.

Mr. J. Hubley Ashton and *Mr. Nathaniel Wilson* for defendant in error.

NORTHWESTERN UNION PACKET CO. *v.* HOME INSURANCE CO.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 467. Submitted January 19, 1872.—Decided January 29, 1872.

A writ of error to the highest court of a State must be allowed, either by a justice of this court, or a judge of that court.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

On looking at the record we find no allowance of a writ of error, either by a justice of this court or by a judge of the state court. We have repeatedly decided that such an allowance was necessary, upon a writ of error addressed to the highest court of the State, by which the judgment or decree could be rendered. *Callan* v. *May*, 2 Black, 541, 543; *Twitchell* v. *The Commonwealth*, 7 Wall. 321; *Gleason* v. *Florida*, 9 Wall. 779. The case of *Davidson* v. *Lanier*, 4 Wall. 447, 453, referred to by counsel for the plaintiff in error, was a writ of error addressed to an inferior court of the United States, and is therefore inapplicable.

The writ before us must be *Dismissed.*

Mr. L. Allis for plaintiff in error.

Mr. George W. McCrary for defendant in error.

The above was rescinded May 6, 1872, and writ of *certiorari* granted. The case was afterwards decided at December term, 1872, as No. 228. Argued and submitted and affirmed April 18, 1873.

GRAY *v.* COAN.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 481. Argued December 15, 1871. — Decided December 18, 1871.

To give this court jurisdiction over the judgment of the highest court of a State, brought here by writ of error, it must appear that some question under the 25th section of the Judiciary Act was made by the pleadings, or passed upon by the court.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This is a motion to dismiss a writ of error to the Supreme Court of Iowa.

On looking into the record we find no question under the 25th section of the Judiciary Act made by the pleadings or passed upon by the court; and we have often held that it must appear affirmatively from the record that such a question was made and passed upon before this court can acquire jurisdiction to review the judgment of a state court upon writ of error.

The motion must therefore be allowed and the writ of error must be. *Dismissed.*

Mr. Daniel Gray for plaintiff in error.

Mr. Walter I. Hayes and *Mr. A. Y. Cotton* for defendants in error.

DAVIDSON *v.* CONNELLY.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 510. Submitted January 12, 1872. — Decided February 5, 1872.

A writ of error to a state court is dismissed because no question was decided by that court of which this court has jurisdiction under the 25th section of the Judiciary Act.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

On looking into the record we do not find that any question was decided in the state court of which we have jurisdiction under the 25th section of the Judiciary Act. The writ of error therefore must be *Dismissed.*

Mr. Lorenzo Allis for plaintiff in error.

Mr. James Smith, Jr., for defendant in error.

JONES *v.* FRITSCHLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

No. 59. Argued November 22, 1872. — Decided January 6, 1873.

Dismissed because the amount in controversy does not give the court jurisdiction.

THE case is stated in the opinion.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

This controversy relates only to certain land in Macon County, Missouri, the value of which, as stated in the answer, was one thousand dollars. This statement is confirmed by the evidence. The amount in controversy, therefore, does not exceed two thousand dollars, and we have no jurisdiction of the case on appeal.

The appeal must be dismissed.

Mr. James A. Buchanan for appellant.

Mr. J. C. Robinson for appellee.

DIAZ *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 97. Submitted February 10, 1873. — Decided March 3, 1873.

Pico v. *United States*, 2 Wall. 279, and *Peralta* v. *United States*, 3 Wall. 434, followed.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

I am instructed to say that the decree in the Circuit Court for the District of California is affirmed on the authority of *Pico* v. *United States*, 2 Wall. 279, and *Peralta* v. *United States*, 3 Wall. 434. It is not thought necessary to do more than to refer to these cases.

Affirmed.

Mr. S. O. Houghton for appellant.

Mr. Attorney General for appellee.

UNITED STATES *v.* STAFFORD.

CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

No. 105. Argued January 20, 1873. — Decided January 27, 1873.

A certified question is answered coupled with a statement that, through subsequent legislation, it has ceased to be of any importance.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

We are all of the opinion that the question certified in this case must be answered in the negative. As the act of Congress has been so modified that the question has ceased to be of any importance, no comment is thought necessary.

Mr. Attorney General and *Mr. Solicitor General* for plaintiff.

Mr. John P. Murray for defendant.

NORTON *v.* JAMISON.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 192. Submitted December 6, 1872. — Decided January 13, 1873.

Bartemeyer v. *Iowa*, 18 Wall. 129, followed.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

Our decision in this case must be governed by the case of *Bartemeyer* v. *Iowa*, 18 Wall. 129, and the writ of error must be

Dismissed.

Mr. Miles Taylor for plaintiffs in error.

Mr. D. G. Campbell for defendant in error.

OULTON *v.* SAN FRANCISCO SAVINGS UNION.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 206. Argued April 7, 1873. — Decided April 28, 1873.

Oulton v. *Savings Institution*, 17 Wall. 109, followed.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

Taxes were collected of the bank in this case by the defendant, to the amount of three thousand and sixty-six dollars and sixty-three cents, which the bank paid under protest, and brought this suit in the state court to recover back the amount, and the suit, on motion of the defendant, was removed into the Circuit Court.

Suffice it to say, without entering into particulars, that the pleadings, proceedings, and evidence in this case are substantially the same as in the preceding case, and the court rendered judgment for the plaintiffs for the whole amount claimed, and the defendant sued out the present writ of error, and for the reasons assigned in the preceding case the judgment must be reversed.

Judgment reversed and the cause remanded with directions to issue a new venire. *Reversed.*

Mr. Attorney General for plaintiff in error.

Mr. C. E. Whitehead for defendant in error.

HUMBIRD *v.* JACKSON COUNTY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

No. 209. Argued April 9, 1873. — Decided April 28, 1873.

Olcott v. *Supervisors*, 16 Wall. 678, followed.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

The case is controlled by the rule established by this court in the case of *Olcott* v. *Supervisors of Fond du Lac County*, decided at the present term, *Olcott* v. *Supervisors*, 16 Wall. 678, to which reference is made for the grounds of the judgment in this case.

Judgment reversed and the cause remanded with directions to issue a new venire. *Reversed.*

Mr. M. H. Carpenter for plaintiff in error.

Mr. H. L. Palmer and *Mr. F. W. Pitkin* for defendant in error.

CHARLESTON *v.* JESSUP.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 234. Argued February 14, 1873. — Decided March 31, 1873.

Tomlinson v. *Jessup*, 15 Wall. 454, followed.

MR. JUSTICE FIELD delivered the opinion of the court.

This case is governed by the decision in Tomlinson and others, appellants, against the same defendant, 15 Wall. 454. Upon the authority of that decision the decree must be reversed, and the cause be remanded to the court below with directions to dismiss the suit; and it is so ordered. *Reversed.*

Mr. D. T. Corbin for appellants.

Mr. I. G. Barker for appellee.

BANK OF NEW ORLEANS *v.* CALDWELL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 255. Submitted January 28, 1873. — Decided March 3, 1873.

This case is dismissed without an opinion, as no exceptions appear to have been taken during the trial.

MR. CHIEF JUSTICE CHASE delivered the opinion of the court.

Ordered, by the court, that the judgment of the Circuit Court for the District of Louisiana be affirmed, without an opinion, no bill of exceptions appearing to have been taken during the progress of the trial.

Mr. William M. Evarts and *Mr. J. Hubley Ashton* for plaintiff in error.

Mr. P. Phillips for defendants in error.

SOUTH CAROLINA *ex rel.* ROBB *v.* GURNEY.

ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

No. 22. Re-argued October 20, 21, 1873. — Decided November 3, 1873.

State v. *Stoll*, 17 Wall. 425, followed.

Mr. Justice Hunt delivered the opinion of the court.

The same judgment is ordered in this case as in *State* v. *Stoll*, 17 Wall. 425.

Mr. W. W. Boyce, Mr. A. G. Magrath and *Mr. B. R. Curtis* for plaintiffs in error.

Mr. D. H. Chamberlain for defendant in error.

THE ADELIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 65. Argued November 3, 1873. — Decided November 17, 1873.

On the facts detailed in the opinion, the court holds that there was no contributory negligence on the part of the libellant.

The case is stated in the opinion.

Mr. Justice Bradley delivered the opinion of the court.

The steam tug Adelia had fifteen barges in tow on the Hudson River, bound from Albany to New York. The barges were arranged under the directions of the master of the Adelia, four abreast, and in four tiers. The libellant's barge, Alaska, was on the larboard side of the front tier, about three hundred feet in rear of the tug. The other tiers followed at short intervals, some eight or ten feet apart. About two o'clock in the morning, when a mile and a half below Hudson, the tug ran aground on the east side of the river, and the tow-boats, being perfectly helpless, came upon her, and the

barge of the libellant was stayed in by her propeller, as is supposed, and sank. It is agreed that it was quite dark at the time, and the captain of the tug says that half a gale was blowing from N.N.W. There is conflicting evidence as to the width of the channel at that place, but the weight of it is, and the assessors found, that it is six hundred feet. The tide was at ebb, and the progress of the tug and tows was about three miles an hour, which is nearly three hundred feet per minute. Of course, if the tug stopped, the tow-boats would be upon her in a little over a minute of time. The pilot of the tug says that, "there are flats on both sides of the river; that they were steering by marks on the land when they could see them, and when they could not see them they steered by guess work; that they could not see the shore or any mark on it when they grounded, and had not been able to get a regular mark for half an hour before they grounded." It seems so very manifest that this was hazardous sailing, that the claimants feel the necessity of relying more on the alleged negligence of the owner of the barge in contributing to the accident, than on any justification of their own conduct. The assessors to whom the questions of fact were referred below, reported as follows: "The assessors have no hesitation in saying that the tug was in fault in not using the proper skill and judgment (caution) in navigation of the said tug. To exemplify: it appears that the navigator of the tug elected to proceed with his tow under what the assessors think were very hazardous circumstances. It is shown by the testimony that the wind was blowing strong, if not nearly a gale; the night was dark, spitting snow occasionally; no landmarks were discernible, or any visible thing to guide the navigator in this 'blind' part of the channel; yet, notwithstanding this, there was no lead, no sounding pole, or any means whatever used to ascertain the depth of the water, or to warn the navigator of his approach on to the flats which lined that portion of the river. This neglect seems the more reprehensible as the channel is deep, (reference to the chart presented shows that the channel is about six hundred feet wide where the collision occurred,) and the approach to the flats steep, and consequently more readily indicated."

In this verdict of the assessors we concur.

The question then arises whether the libellant, by his own negligence, contributed to the accident. It appears that there was no one on the deck of the barge when the collision happened. On one or two of the barges in the forward tier there were persons on deck at the time. But they all agree in saying that nothing could

have been done to prevent the collision. Their rudders, if they could have been unlashed, were at once disabled by the approach of the barges behind, and they could hardly be apprised of the stopping of the tug before they were down upon her. Besides, the whole tow as well as the tug was under the direction of the master of the latter, and it does not appear that he required the people in the barges to be on the lookout. An experienced tug captain testified that they don't expect to have any one on the deck of the tows; that it is not customary, and is not required. On this point the assessors say: "The assessors are of the opinion that there could not have been anything done to prevent the collision, because, 1st, the distance was too short, say three hundred feet at three knots, would be overcome in one minute of time; 2d, because those on board of the tow had no intimation that the tug was ashore, or even in danger, as the hail to 'keep off' or 'keep clear' certainly conveyed no warning that such a state of things existed, but would clearly be taken for an order to 'keep off' from the 'flats.'"

The decree is affirmed, with interest and costs.

Mr. Edward D. McCarthy and *Mr. J. Hubley Ashton* for appellant.

Mr. Morton P. Henry, Mr. T. C. T. Buckley and *Mr. James W. Paul* for appellee.

CHICAGO AND NORTHWESTERN RAILWAY CO. *v.* FULLER.

ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

No. 89. Submitted November 6, 1873. — Decided December 23, 1873.

Railroad Co. v. *Fuller*, 17 Wall. 561, followed.

Mr. Justice Swayne delivered the opinion of the court.

The record in this case presents the same question as the record in No. 88, between the same parties, heretofore decided at the present term, *Railroad Company* v. *Fuller*, 17 Wall. 561. The opinion in No. 88 decides that question.

The judgment in this case is, therefore, affirmed.

Mr. B. C. Cook for plaintiff in error.

Mr. J. Hubley Ashton and *Mr. Nathaniel Wilson* for defendant in error.

KENNER *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF LOUISIANA.

No. 202. Argued April 8 and 9, 1874. — Decided May 4, 1874.

The Confiscation Cases, 20 Wall. 92, followed.

MR. JUSTICE STRONG delivered the opinion of the court.

There is nothing in this case which we have not considered in our review of *The United States* v. *Eight Hundred and Forty-four Lots and Ten Squares of Ground*, the property of John Slidell, just decided. *The Confiscation Cases*, 20 Wall. 92.

The judgment of the Circuit Court is affirmed.

Mr. C. Cushing, *Mr. W. W. Boyce*, *Mr. C. M. Conrad*, *Mr. L. L. Conrad*, *Mr. W. D. Davidge* and *Mr. R. Fendall* for plaintiff in error.

Mr. Attorney General for defendant in error.

ALLEN *v.* TARLTON.

ERROR TO THE SUPREME COURT OF THE STATE OR LOUISIANA.

No. 251. Submitted March 16, 1874. — Decided March 23, 1874.

Dismissed for want of jurisdiction.

MOTION TO DISMISS.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The writ of error taken in this cause is dismissed, because it does not appear that judgment of the state court necessarily involved the decision of any question which could give this court jurisdiction. *Dismissed.*

Mr. Miles Taylor and *Mr. P. Phillips* for plaintiff in error.

Mr. Thomas J. Durant and *Mr. Charles W. Hornor* for defendants in error.

UNITED STATES *v.* SIX LOTS, HATCH, Claimant.

UNITED STATES *v.* TEN LOTS, CONRAD, Claimant.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 255. Submitted April 8, 1874. } Decided
No. 283. Argued April 8 and 9, 1874. } May 4, 1874.

The Confiscation Cases, 20 Wall. 92, followed.

MR. JUSTICE STRONG delivered the opinion of the court.

These cases are in all essential particulars like the case of *The United States* v. *Eight Hundred and Forty-four Lots and Ten Squares of Ground*, the property of John Slidell; *The Confiscation Cases*, 20 Wall. 92. What we have said in reference to that case is equally applicable to these,

In each case the judgment of the Circuit Court is reversed, and the cause is remanded with instructions to affirm the judgment or decree of the District Court. *Reversed.*

CLIFFORD, DAVIS and FIELD, JJ., dissented.

Mr. Attorney General and *Mr. Thomas J. Durant* for plaintiff in error.

Mr. C. M. Conrad and *Mr. C. Cushing* for defendants in error.

PRIEST *v.* FOLGER.
THWING *v.* FOLGER.

ERROR TO THE SUPREME JUDICIAL COURT OF THE STATE OF MASSACHUSETTS.

Nos. 298 and 299. Argued April 21, 1874. — Decided May 4, 1874.

Habich v. *Folger*, 20 Wall. 1, followed.

MR. JUSTICE HUNT delivered the opinion of the court.

These cases involve the same questions as the case above decided, *Habich* v. *Folger*, 20 Wall. 1; and, in accordance with that decision, are affirmed.

Mr. Dudley Field for plaintiffs in error.

Mr. John C. Dodge for defendant in error.

WOODMAN PEBBLING MACHINE CO. *v.* GUILD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 311. Submitted January 16, 1874. — Decided January 19, 1874.

A judgment is entered according to the stipulation of the parties.

MR. JUSTICE CLIFFORD delivered the opinion of the court.

Since the appeal the parties have come to an adjustment of the controversy, as appears by the stipulation on file.

Pursuant to that stipulation I am instructed to direct that the decree of the Circuit Court be reversed; the entry to be, that it is reversed by consent and that the cause be remanded with directions that a decree be entered in the Circuit Court for the complainant as prayed in the bill of complaint, it being stated in the mandate that the decree here is entered by consent of parties as appears by the stipulation which should be recorded in the case.

Reversed.

Mr. T. L. Wakefield for appellant.

Mr. George L. Roberts for appellees.

BRUGERE *v.* SLIDELL.
HEATH *v.* SLIDELL.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Nos. 479, 532. Submitted January 8, 1874. — Decided January 19, 1874.

Bigelow v. *Forrest*, 9 Wall. 339, and *Day* v. *Micou*, 18 Wall. 156, followed.

MR. JUSTICE STRONG delivered the opinion of the court.

Both these cases are controlled by the decisions made in *Bigelow* v. *Forrest*, 9 Wall. 339, and in *Day* v. *Micou*, just decided, 18 Wall. 156.

Judgment in both cases *Affirmed.*

Mr. L. M. Day for plaintiffs in error.

Mr. Thomas Allen Clarke for defendants in error.

HARDY *v.* HARBIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 14. Argued October 15, 1874. — Decided November 16, 1874.

After a careful examination of the proof relating to the identity of the appellants' ancestor with the grantee from the Mexican government, the court affirms the judgment of the court below, without deciding the questions of law.

THE case is stated in the opinion.

MR. JUSTICE HUNT delivered the opinion of the court.

The appellants are the children of John Hardy. They allege that to their ancestor, under the assumed name of Thomas M. Hardy, the Mexican government issued a grant, October 23, 1843, for the premises in controversy; that the appellees, purchasers under a void sale of Hardy's interest, procured the commission, under the act of the 3d of March, 1851, to confirm to them the lands so granted as aforesaid to Hardy. The bill prays that the appellees may be compelled to convey to the appellants.

A demurrer to the bill was interposed upon the ground that the defendants were innocent purchasers, having no knowledge of the fraudulent character of the administrator's sale under which the confirmees purchased. The Associate Justice of the Supreme Court, who heard and decided the demurrer, overruled it, on the ground that under the allegations of the bill the sale at which the appellees purchased was absolutely void.

The demurrer having been overruled, an answer was put in which denies that the complainants (the appellants here) are the legal representatives of the Hardy to whom the grant was made; denies the alleged frauds; denies all knowledge or notice on the part of the defendants of such frauds if they were committed, and all knowledge or notice of the invalidity of the proceedings in the Probate Court, under whose order of sale they became purchasers.

This answer raised issues of fact and of law — of fact as to the identification of the Hardy to whom the grant was made with the Hardy whose heirs the complainants are admitted to be; of law, whether purchasers at a sale made by a court having no jurisdiction of the person or subject matter, can shield themselves under a plea of purchase in good faith, without notice of the invalidity of the decree under which the sale was made.

The district judge, sitting as circuit judge, entered a decree dismissing the bill upon the ground that the defendants were purchasers of parties holding the legal title — that is, the patent of the United States — and that they had no notice of the invalidity of the title of their vendors upon which the confirmation was made.

From this decree the complainants appeal to this court.

The points of law raised are —

First, That the complainants (children of John Hardy) at the date of the death of Hardy in California, in 1848, were aliens, and incapable of taking his real property by descent, and this both by the common law and the Mexican law.

Second, That the defendants are innocent *bona fide* purchasers for value without notice from the patentees, and are therefore protected in their possession. Upon this point the district judge, sitting as circuit judge, held with the defendants and dismissed the bill.

The question of fact is the identity of the two Hardys described in the evidence, or rather the union of the names of John Hardy and Tomas M. Hardy in one man, and that man, John Hardy, the father of the complainants.

The question of fact lies at the bottom of the case. If it should be held that aliens may inherit, that would be of no influence should it be decided that the complainants are not the children of the man who called himself Tomas M. Hardy.

Should it be held that the defendants are not innocent purchasers without notice, or that if such, that fact does not constitute a defence to the action, we should make no step towards a conclu-

sion, unless we also decided that the complainants were the children of the man entitled to the grant.

If it is found that the complainants are such children, the other questions arise. If it is found that they are not, the case is ended. In any aspect the question of identity arises and must be decided, and it is manifest from the suggestions already made that it is the point that should be first determined. We proceed to its consideration.

A person describing himself as Tomas M. Hardy died in California, in 1848, having received a land grant as a soldier in the Mexican service.

The children of John Hardy, of Canada, undertake to show that this person was their father.

John Hardy was a mechanic, born in the year 1801, who left Canada in the year 1831 and never returned. His wife had died not long before, leaving three young children, of whom the plaintiffs are survivors.

In seeking a solution of the question before us the inquiries at once present themselves,—

Why did he leave Canada? Was there any reason for changing his name?

He left Canada, in the language of the old tales, to seek his fortune. His wife, the daughter of a respectable clergyman, had died. Although not in want or destitution, he was not as successful in business as he wished to be. The disposition of her property by his mother did not please him. He had sought to interfere with it more officiously than pleased the mother, and she had given it to her other children, omitting to give him any portion. It was rumored also that he desired to marry the sister of his deceased wife, and that his offers in this respect were declined. These, we believe, are the only reasons shown for his leaving Canada.

These circumstances furnish the answer to the other inquiry suggested, and show that no reason existed for a change of name. He had committed no crime which compelled him to conceal his departure. There was no case of affection betrayed of which he desired to escape the consequences. He left openly, without concealment, with the knowledge of his friends, and with no attendance of crime, disgrace or dishonor. He had some conversation, as witnesses state, in which he declared that his friends would not hear from him until he was in better circumstances, and that he would change his Christian name, retaining the name of Hardy.

We place little value on the evidence of these trivial circumstances, given thirty or forty years after the occurrence, there being nothing at the time, or occurring since, to impress the conversation on the mind of the witness. That a man from any cause, desirous of concealing himself from his relatives, should retain his family name and seek to effect that object by changing his Christian name only, we think is hardly credible.

If we correctly understand the evidence no witness who ever knew or saw John Hardy in Canada also saw Thomas M. Hardy, who died in Benicia in 1848, and identified them as the same person. There is, however, evidence that John Hardy was in the Southern States and in Mexico at periods several years after leaving Canada. A number of witnesses testify to meeting a Mr. Hardy in various parts of Mexico, at different times from 1839 to 1846. Mr. Galbraith Lindsay testifies that in the winter of 1836–7, in Natchez, Mississippi, he frequently saw a man calling himself John Hardy, with whom he talked about persons and affairs in Canada, and was satisfied that he knew the persons and places of which he spoke, and that he was John Hardy. Lindsay was in Natchez four months on this occasion, and saw Hardy at different times during a period of four weeks. Two observations suggest themselves in relation to his evidence. 1st. That Hardy had not at that time made any change of name. He called himself, he says, John Hardy. If from the motives of anger or disappointment suggested, he determined to change his name, he seems to have reconsidered the determination, and at this time bore his true name.

2d. Hardy told the witness that he had come down the river, and that he had worked as a carpenter, repairing boats or building boats up the river. It does not appear that he told him that he had been a soldier in the Mexican service, or that he had been in or had seen the battle of San Jacinto. Although he might not have desired to proclaim this fact in the Southern States, would he have been likely to omit so important a feature of his life in his frequent conversations with his newly found countryman? Thomas M. Hardy, it is pretty clearly shown by the evidence of Baldridge, was in the Mexican service at the battle of San Jacinto, which occurred on the 21st of April, 1836, or witnessed the battle. Again. Would one who had taken the Mexican side in that contest be likely to return at once to the Southern States, where, as all know whose recollection goes back to that period, the Texan excitement was intense?

If we suppose that this conversation and recognition by Lindsay occurred at the beginning of the year 1836, the difficulty seems to be equally great. He conferred with Lindsay about his pursuits and employment, and was advised by him to go into the country and pursue his business as a hewer, where he could obtain good wages. No suggestion of Texas or Mexico passed between them. He came from up the river, and it is difficult to believe that before April of that year he would have drifted down the river, have passed through Texas, and entered into the uncongenial service of Mexico, and been present, on the 21st of that month, at the battle of San Jacinto. One or the other of the embarrassments suggested must have existed if this man was the same one who afterwards obtained the land grant in question.

Testimony is given by Thomas Hardy, a cousin of John Hardy, to the effect that in 1847 he received a letter from John Hardy signed with that name, and post-marked Monterey, California. The letter stated that the writer was building a mill, had a block of land in California, and wanted his son to come out; stated that he had reached California by the way of Texas, and witness thinks by way of Mexico; that he had done well, and we could all get rich if we would come out there. The substance of the letter the witness communicated to John Hardy's son, and acknowledged to Hardy the receipt of the letter.

Without intending an imputation upon the veracity of the witness we may say that this evidence is open to several criticisms.

1st. It is an unfortunate circumstance that the letter is not produced, or that a most diligent search has not been made for it.

2d. The letter was written and received seventeen years before the witness testifies to its contents. He is a member of the family making the claim, and may be assumed to be familiar with the hopes, wishes, and traditions of the family, and with their theories on the subject. Although he has no interest in the claim it is not improbable that these circumstances may have given to his evidence a point and particularity that it would not otherwise possess.

3d. Alexander, the son, was then twenty-two years of age, having been born in 1825, according to the allegation of the bill. Why did he not accede to his father's request? Why did he not strike out as his father had done, and with a prospect before him so much better than his father had? The evidence does not give us the reason. No attention seems to have been paid to the invitation by the son or by the family. That this should be seems

scarcely consistent with the idea of the actual receipt of such a letter.

4th. The letter purported to come from Monterey in 1847. Now, at that time, Thomas M. Hardy lived on the Cache Creek, in the Sacramento region, one hundred and fifty or two hundred miles from Monterey, which was on the coast. That he lived there during that year, and in 1848, until his death, and for several years previous, is proved by numerous witnesses. He there had his ranch, his horses, his mules and much other property.

The letter stated that he had built a mill and had a block of land. The presumption is that he wrote and sent his letter from the place where he resided; that he was building his mill there, and that his block of land was at the same place. Of course this is not certain, because he may have built in one place and lived in another one hundred or two hundred miles distant; his land may have been distant both from his mill and his residence, or he might have had his letter mailed at a place far off from where he wrote it. All these suggestions are possible but not probable, and the intendments of law are against them. For these reasons we do not attach much importance to the letter said to have been received by Thomas Hardy in 1847.

It should be added in support of the statement of the witness that he testifies that some friends of the family had been in the Mexican service.

In this connection may be considered the evidence of Mr. Gillespie, offered to show that John Hardy was at Monterey, and that he was the same man who lived on the Cache Creek. Mr. Gillespie, an officer of the United States sloop of war Cyane, testifies that a Mr. Hardy was in the service on that vessel in June, 1846; that he saw him also at San Diego and Los Angeles, and afterwards at his place at the mouth of the Feather River, where he ferried Commander Stockton and himself across the river in July, 1847, at his ranch, known as Hardy's ranch. Los Angeles and San Diego are some four hundred miles distant from the Cache Creek, on which Hardy was a resident during the years 1842, 1843, 1844, 1845, 1846 and 1847, as deposed by many witnesses. That Mr. Gillespie thus testifies that he was on board his vessel, and was at San Diego and Los Angeles in 1846, and that the same man was in the Feather River region (which is the same as the Cache Creek region) in 1847, is but another instance of the irreconcilable character of the evidence before us.

That Hardy was in Cache Creek, Sonoma region, during the

years 1842, 1843, 1844, 1845 and 1846, as well as in 1847 and 1848, was sworn to by Davis, by Fallon, by Leese, by Bidwell (who says he saw him every day from 1843 down to 1847), by Sutter and many others. In his prayer for the grant to the Mexican government, which bears date of September 20, 1843, he certifies that he was then established on the frontier of Sonoma. The Hardy on the Cyane, at San Diego and Los Angeles, and who wrote home from Monterey, if any one did, could scarcely have been the same man who made this petition and received the grant and lived during all these years on the Cache Creek. Other witnesses speak of knowing a Mr. Hardy in the southern part of California in 1844, 1845, 1846. If there was such a man, he may have been John Hardy, but he was not Thomas M. Hardy.

The evidence of Lindsay and Gillespie, which we have thus considered, and the evidence of Thomas Hardy that he received a letter from John Hardy, post-marked Monterey, which we have also considered, are the only pieces of testimony in the case that approach to the character of direct evidence. That they are not very direct is apparent, and that they are not entitled to any considerable weight we have endeavored to show.

We will now refer to the circumstances in evidence which the complainants think entitle them to a decree in their favor.

The complainants give great weight —

1st. To the evidence that the handwriting of the name Hardy, attached to the *espediente* and the "loose paper" on which the grant was made, is the handwriting of John Hardy, although the name signed is that of Tomas M. Hardy.

2d. To the evidence that the peculiarities of person, of habits and manners exhibited by John Hardy were exhibited also by Tomas M. Hardy; and,

3d. To his declarations that he was from Canada, and had left a family there.

As to the first point. We cannot but think that there is great doubt of the principle of this rule of evidence. The man being ascertained, it is competent to prove that a signature in question is his by those who have seen him write and know his handwriting. Although a comparison of handwritings is not generally allowable, the evidence of a witness is based upon a mental comparison of the writing presented with that before seen by him. But it is a different proposition when the identity of a man is to be established by proving that a paper whose origin is disputed looks like one which he is proved to have signed.

In relation to comparison of handwritings, *i.e.* where genuine signatures are put in evidence to enable the jury to judge by comparison, Bennett, J., in *Adams* v. *Field*, 21 Vt. R. 256, says: "Those having much experience in the trial of questions depending upon the genuineness of handwriting will not require to be reminded that there is nothing in the whole range of the law of evidence more unreliable or where courts and juries are more liable to be imposed upon."

In the present case the evidence of this character is entirely unreliable. It is given by persons in Canada unskilled in the subject, but who from relationship to John Hardy, or early acquaintance with him, seem to be supposed to be especially qualified to speak on the subject. Some men are called who claim to be skilled in the subject of genuine handwritings, and who have experience in comparison of handwritings. No intelligent court should be willing to base a judgment on evidence so little satisfactory as this evidence is as given in this case. A note for five dollars and fifty cents, signed by John Hardy, bearing date in 1831, and proved by some witnesses to have been signed by him, is taken as the standard. This note is not admitted to be genuine. (See 1 Green. Ev. § 577.) The proof is in 1864 of a signature made in 1831. The competency of this evidence is quite doubtful. A writing to Mr. Leese is also produced. The body of the note is plainly in a different handwriting from the signature, and was so proved to be, and yet some of the experts who assume to identify the signatures as made by one man are not able to state whether it was written by the same hand that signed the note. Hardy was a mechanic not much accustomed to writing while at home, and his signature to the note is of that stiff, unpractised character common to the signatures of such men. Although the letters proving the signature of Tomas M. Hardy are in many instances like those in the signature of John Hardy, the signature is in its general appearance more easy and flowing than that of John Hardy.

Again. How is it possible that John Hardy signed the papers containing the statements to be found in these documents? Tomas M. Hardy may well have done so, but we find it difficult to believe that John Hardy could have done it. The *espediente* is a petition signed Tomas Hardy, to the military commandant of the frontier of Sonoma for a grant of land, and is dated at Sonoma, September 20, 1843. Accompanying this is a document styled the loose paper, signed also by Tomas Hardy, which states that he arrived

at the Port of Vera Cruz in the year 1825, in the Victoria vessel of war, in the position of lieutenant of the same; that on various occasions he has rendered services to the Mexican nation in the same manner previously, and for this reason he is considered as naturalized. This statement may have been made of some Hardy who came to Vera Cruz on the Victoria in 1825, and entered into the maritime service of Mexico, but it was not true of John Hardy, who did not leave Canada until 1831, and who was in Natchez during the winter of 1836–7, as testified by Mr. Lindsay, and who never performed any maritime service for Mexico, so far as is proved by the evidence. We do not find evidence under this head to sustain a finding of the identity of John and Thomas Hardy.

2d. Nor do we find the case supported either by the evidence that the peculiarities of person of John Hardy were found in Thomas Hardy, or that Hardy's declarations respecting himself and the condition of his family afford any satisfaction on this point.

The testimony is unsatisfactory, both in the character of the witnesses testifying in some instances and as to the result of their evidence generally. An illustration of the extravagant absurdity of some of the witnesses is found in the evidence of Wm. B. Frazer, to which reference is made without reciting it.

The evidence of Hardy's statements regarding his nativity, his family, and his whereabouts in his previous life, are contradictory and uncertain. Several witnesses testify that he stated that he was born in Canada; a larger number state that he said he was from Canada; a still larger number testify that he told them he was born in England, and still a larger number either state that he said he was from England or was an Englishman. Baldridge says he told him he sat upon the mountains of Wales and saw ships sail out of Liverpool, and that he had been imprisoned in England for contempt of court.

It is proved that John Hardy was a carpenter and working on boats on the Mississippi as late as 1836–7, and yet Thomas Hardy stated that he had been sent to sea by his father at the age of fourteen, had sailed over the world in ships; that he had taken part in the revolutions in Peru and on one occasion had there commanded a battery of artillery.

Many witnesses testify that he spoke of the children he had left at home, while others testify that when sober he refused to speak of himself or his family.

Some testify that he spoke of his having a wife at home. Still

others that he said he left Canada on account of a dissension with his wife, while others make him refer to his children only.

John Hardy is described by his cousin, Thomas Hardy, as being five feet seven or eight inches high, weighing one hundred and sixty-five to one hundred and eighty pounds, eyes nearly black, "large, full, expressive, bright," hair black and curly, good-looking face, high forehead, bold and determined look, and when he laughed he did it heartily and showed it over his whole face, with a mark over his right eye about an inch above his eyebrow, having full and smooth voice, with distinct articulation, and a good singer. "He was the life of a company, quick tempered, but with fine feelings."

Mr. John Bidwell was called by the complainants to identify Hardy of Cache Creek as the father of the complainants. No witness called appears more favorably upon the record than Mr. Bidwell. He describes the Hardy he knew from 1843 to 1847, as being five feet seven or eight inches high, swarthy complexion, low forehead, full cheek bones, chin broad and blunt, his nose inclined to turn up, giving him an Irish or pugnacious appearance, upper lip short, mouth rather broad, broad, blunt chin. His manner was reserved and uncommunicative. Never heard of his singing; thinks he should have known it if he did. Spent many evenings with him but never heard him tell an anecdote and never saw him laugh. He says his eyes were of the gray order, hair dark, inclined to be gray, and thinks he had a scar on his face, but can't tell where. His manner was repulsive, and witness did not associate with him on account of his habits and disposition.

This description, if not positively repugnant to Thomas Hardy's, certainly affords no reason to suppose that the two men were identical. Departing from this reasonable description, we find nearly every characteristic of the human face and form attributed to Thomas Hardy, from the clumsy determination of Frazer at identification, to particulars totally different from those belonging to John Hardy. The general result of the evidence of John Hardy's family gives him black hair, dark eyes, large, full, and expressive, dark complexion, straight nose, a little broad on the top, pleasant, open countenance, bold and determined, a scar across his right eye, social disposition, genial and agreeable, of good habits and good moral character.

The testimony of many of the California witnesses called by the complainants describes Hardy of Cache Creek as having light hair and whiskers, nearly sandy, deep-set eyes, pug nose, with a scar

which some locate on his brow and some on his nose, silent, reserved, and ungracious in his manners, having the English peculiarity of omitting the *h* and aspirating the vowels, frequently drunk, and fond of the society of loose women. It is not intended to say that, among the great number of witnesses called by the complainants, there are not many who give the California Hardy the appearance, manners and conversations which tend to the belief that he was the father of the complainants. We are, however, clear and emphatic in the opinion that a consideration of the entire body of the testimony does not prove that Thomas Hardy, who died in California in 1848, was the man, John Hardy, who left Canada in 1831.

On the contrary, we are strongly inclined to the belief that it is proved affirmatively that the two men described were different men.

We have not attempted to analyze or to classify the three thousand folios of testimony which this record presents. It would be impossible to do so within the limits of an opinion of this court. We have, however, examined it carefully, and have no doubt of the correctness of the result we have reached.

This conclusion renders unnecessary a consideration of the other questions in the case, and leads to an affirmance of the decree dismissing complainants' bill. *Affirmed.*

Mr. Henry Beard, *Mr. B. S. Brooks*, *Mr. N. P. Chipman*, *Mr. W. W. Chapman* and *Mr. C. T. Botts* for appellants.

Mr. J. B. Harmon, *Mr. E. Janin*, *Mr. E. L. Goold* and *Mr. J. P. Hoge* for appellees.

NORTHWESTERN UNION PACKET CO. *v.* VILES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

No. 70. Argued and submitted November 17 and 18, 1874. — Decided December 7, 1874.

Northwestern Union Packet Co. v. *Clough*, 21 Wall. 317, followed.

Mr. Justice Strong delivered the opinion of the court.

The errors assigned in this case are the same as those which were considered in the case of these plaintiffs against Clough and wife, just decided, except that some assigned in that case have not been assigned in this. The rejection of Turner's deposition, and the admission of the captain's declarations to Mrs. Clough are the only matters now brought to our attention. We need add nothing to what we have said in the former case. The same reasons that

required the reversal of the judgment obtained by Clough and his wife require the reversal of this judgment. Indeed the error here is more apparent. It does not appear that the conversation of the captain with Mrs. Clough occurred before the plaintiff left the boat, and before the relation as a passenger to the defendants or to the captain had ceased. In fact, the contrary appears.

The judgment of the Circuit Court is reversed, and a *venire de novo* is directed. *Reversed.*

Mr. John W. Cary and *Mr. J. P. C. Cottrell* for plaintiff in error.

Mr. M. H. Carpenter for defendant in error.

LEE COUNTY *v.* CLEWS.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

No. 79. Argued and submitted November 30, 1874. — Decided December 21, 1874.

Chambers County v. *Clews*, 21 Wall. 317, followed.

Mr. Justice Hunt delivered the opinion of the court.

The case of *The County of Lee*, plaintiff in error, v. *Clews*, defendant, (No. 79,) involves the same questions and is decided by the same principles as *Chambers County* v. *Clews*, 21 Wall. 317.

The judgment is *Affirmed.*

Mr. R. T. Merrick for plaintiff in error.

Mr. Samuel F. Rice for defendant in error.

SCHOW *v.* HARRIMAN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 101. Argued December 4, 7 and 8, 1874. — Decided January 25, 1875.

Schulenberg v. *Harriman*, 21 Wall. 44, followed.

Mr. Justice Field delivered the opinion of the court.

This case depends upon the same principles for its disposition as the case of *Schulenberg* v. *Harriman*, just decided, 21 Wall. 44, and upon its authority the judgment is *Affirmed.*

Mr. E. C. Palmer for plaintiff in error.

Mr. John C. Spooner, Mr. B. J. Stevens, Mr. P. L. Spooner and *Mr. J. C. Sloan* for defendant in error.

BASSE *v.* BROWNSVILLE.

ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

No. 109. Argued December 18, 1874.— Decided January 11, 1875.

The treaty of Guadaloupe Hidalgo had no relation to property within the State of Texas.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This writ of error is dismissed for the want of jurisdiction. In *McKinney* v. *Saviego*, 18 How. 240, it was decided that the treaty of Guadaloupe Hidalgo had no relation to property included within the State of Texas. The record does not show that any question was made in the court below or decided, as to the effect of the act of 7th February, 1853, upon the plaintiff's title. So far as anything does appear, the case was disposed of without reaching that question. *Dismissed.*

Mr. Edgar Ketchum, *Mr. James R. Cox* and *Mr. C. Robinson* for plaintiff in error.

Mr. Thomas J. Durant and *Mr. Charles W. Honor* for defendant in error.

ROGERS LOCOMOTIVE AND MACHINE WORKS *v.* HELM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 134. Argued January 12, 1875.— Decided February 1, 1875.

To justify a decree for the specific performance of a parol contract for the sale of real estate, the contract sought to be enforced, and its performance on the part of the vendee must be clearly proved; and in this case it is not so proved in several particulars.

THE case is stated in the opinion.

MR. JUSTICE HUNT delivered the opinion of the court.

The complainants, who are also the appellants, filed their bill to enforce the performance of a parol contract for the sale of a house and lot in the city of Jackson.

The alleged contract was made with the Mississippi Manufacturing Company, which has since gone into bankruptcy, and all its rights, by means of the mortgage hereafter to be mentioned and a conveyance from its assignee, are alleged to have become vested in the complainants.

The bill alleges that in the year 1866 Helm was the owner of a

certain lot in Jackson, on which was a brick storehouse; that the house and lot were purchased of Helm by the manufacturing company for the price of $12,000, which sum was to be paid to Helm by one hundred and fifty shares of the stock of said company, for which a certificate was to be issued to him, and on the issuance thereof Helm was to make conveyance of the said lot; that the contract was not in writing, but afterwards, on the 4th of March, 1867, by a letter in writing, Helm acknowledged the receipt of the one hundred and fifty shares, and acknowledged that the lot was to be conveyed by deed to the company (this was contained in Exhibit A, which is set forth at length); that some work was needed to be done upon said house, which Helm agreed to have done for the company and for which the company agreed to pay; that in June, 1867, Helm made out an account of the expenditures for said work, amounting to $919.35, among the items of which was a receipt for taxes on said house and lot for $45, on which was written by direction of Helm a receipt of the same for the Mississippi Manufacturing Company. It is alleged that by reason of these transactions Helm is estopped from denying that the lot is in equity the property of the Manufacturing Company. It is further alleged that in 1867 the company was put in possession of said lot by Helm; that he acted as their agent in renting the same on their account and paying the rents to them. That Helm now repudiates the sale, alleging that the same was verbal only and not binding, whereas it is alleged that the contract had been acknowledged by Helm in writing; that it had been fully performed on the part of the company by paying the purchase money, and partly performed by Helm by giving possession to the company, making improvements thereon on their account, and receiving payment therefor from them.

It is further alleged that in 1869 the company, being indebted to the complainants in a large sum, executed to them a mortgage of the premises before referred to; that the company became bankrupt, and for a valuable consideration the assignee sold and conveyed to the complainants all his right and interest in the property.

The allegations of the bill respecting the terms of the contract and the alleged performance are denied in the answer, and a certain other contract, quite different from the one set up in the bill, is stated to have constituted the understanding between the parties.

To justify a decree for the specific performance of a parol contract for the sale of real estate, the contract ought to be enforced

and its performance on the part of the vendee must be clearly proved. Omitting the consideration of the question whether possession by the vendee in such a case is a controlling circumstance, omitting also the consideration of the point whether the terms of the alleged contract can be established otherwise than by writing in some form or of some character, we think it cannot be questioned by any one that all the material points of the alleged contract must be proved by some competent evidence and the substantial performance of the conditions undertaken by the vendee must be proved in like manner.

It appears from what has already been stated, that the complainants base their case upon an alleged contract by which Helm agreed to sell to the Manufacturing Company his house and store lot in Jackson, for the sum of $12,000, and that Helm agreed to receive the payment of that sum by a certificate for one hundred and fifty shares of the capital stock of their company, which certificate it is alleged was received and accepted by Helm in satisfaction of that sum.

This involves the specifications following, to wit:

1. The agreed price of $12,000 for the house and lot.

2. A description of the particular house and lot so agreed to be sold.

3. Helm's agreement to accept a certificate of one hundred and fifty shares of the capital stock of the Manufacturing Company in payment of that amount.

4. That he did so receive and accept it.

The answer is at least to be construed as putting in issue each of these allegations and requiring that proof of them be made by the complainants. Taking the evidence and the admissions of the pleadings into account, we may hold that the identity of the house which is the subject of the contract is sufficiently established. On the other points there is a failure of proof.

The complainants allege that the price of the house was $12,000 pure and simple. The answer after denying this statement alleges that so far as there was any understanding, it was to this effect: that Helm was to take not one hundred and fifty shares, but three hundred shares of the manufacturing stock, not at par, but at an agreed value per share; that the company agreed to establish a banking house in said building at Jackson, with a capital of $100,000 and that Helm should be the permanent cashier thereof, at a salary of $2000 per year; that in part payment for the three hundred shares Helm was to fit up the house in question for a

banking house and convey it to the company for that purpose, at an estimate to be ascertained by the parties, and that the balance in payment of the stock should be paid by him in money.

That an agreement to take three hundred shares of stock is different from an agreement to take one hundred and fifty shares; that an agreement to receive one hundred and fifty shares in payment for a banking house is different from an agreement to receive three hundred shares at an agreed value in part payment of the house to be fitted up by the vendor for a banking house, the vendor to be appointed and hold the office of cashier in permanence, at a salary of $2000, and to pay for the balance of the stock in money, are propositions that need not be argued.

How stands the proof as to which of these was the agreement made?

Annexed to the complainants' bill are four exhibits and seventeen vouchers, by which the case is sought to be sustained. None of them, unless it be Exhibit A, has even a tendency to support the complainants' view of the case rather than the defendant's. They are all equally consistent with either theory. They show that each party understood that the Manufacturing Company had an interest in the Jackson house, and that the defendant was making expenditures thereon and receiving rent therefrom, for which an account was expected by the company. This would be equally the case whether the house was sold upon a simple agreement to pay $12,000 for it in stock, or whether it was connected with the other conditions claimed to exist by the defendant. The parties were then acting in confidence with each other, and were not particular in their actions or expressions.

Exhibit A is a letter from the defendant acknowledging the receipt of a certificate for one hundred and fifty shares of stock, and sending to the company a statement of their indebtedness to him. Whether the certificate and the indebtedness had any connection with each other it is impossible to say.

The letter proceeds: "You can send me the company's obligation for the amount over and above the $12,000 I pay for the one hundred and fifty shares, and continue to give me acknowledgments of the company's indebtedness as I make other payments." This assumes that the writer has paid $12,000 for the shares, but without specifying the manner, the conditions, or connections, and assumes that the company owes him money, but that he expects to make still other payments for those shares. — "Continue to give me acknowledgments of the company's indebtedness as I make

other payments." The very slight effect to be attributed to this letter must entirely cease when we read the evidence of the president of the Manufacturing Company introduced by the complainants, in which he testifies that "Price of the house was what it cost to build it, which was less than ten thousand dollars," and also "the letters marked A, C and D were written by Helm and refer to the house in controversy, and were in part payment of a contract which was never executed." If the price of the house was less than $10,000, and the one hundred and fifty shares were in part payment only of a contract for its purchase, the allegations that $12,000 was the price, and the one hundred and fifty shares received in full payment, are of course to be disregarded. Not only is the complainants' theory unsustained, but the defendant's theory is greatly aided by the further testimony of the same witness. In answer to the question "What connection had the banking arrangement referred to in the exhibits of Helm with the conveyance and sale of the property in dispute? Were they or not in any way dependent one upon the other, or what were the true facts relative thereto?" he says "the house was sold by Helm and bought by Mississippi Manufacturing Company for the express purpose of a banking house for said company, of which Helm was to be cashier. I think the sale would not have been made, but for the purpose of a banking house. One hundred thousand dollars was to be the capital of the bank, and two thousand dollars to be Helm's salary. The bank was never established."

If the arrangements and conditions were of this character, it is not pretended that they were ever carried out in form or in substance, and it would be far from an equitable disposition of the case to compel Mr. Helm to give a deed of the property. The certificate he offers to return and it no doubt belongs to the bankrupt's estate.

There is no evidence in the record that the title of the assignees in bankruptcy has been conveyed to the complainants. Without such conveyance, or without making them parties defendant, there can be no recovery in this action. The point, however, is not made by the defendant, and we do not base our decision upon it.

For the reasons before stated we are of the opinion that the decree dismissing the bill should be

Affirmed.

Mr. P. Phillips for appellant.

Mr. R. M. Corwine and *Mr. Quinton Corwine* for appellee.

OULTON *v.* SAVINGS AND LOAN SOCIETY.

CARY *v.* SAME.

SAME *v.* GERMAN SAVINGS AND LOAN SOCIETY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

Nos. 169, 172 and 173. Argued February 3, 1875. — Decided February 22, 1875.

Cary v. *San Francisco Savings Union*, 22 Wall. 38, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The material facts in these cases are the same as in *Cary* v. *The San Francisco Savings Union*, 22 Wall. 38, just decided. The judgments are all reversed for the reasons assigned in that case, and the causes are all remanded with instructions to render judgment in each of them for the defendant. *Reversed.*

Mr. Attorney General for plaintiffs in error.

Mr. H. J. Tilden and *Mr. C. E. Whitehead* for defendants in error.

OULTON *v.* CALIFORNIA INSURANCE CO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 170. Argued February 3, 1875. — Decided February 22, 1875.

Barnes v. *Railroad Co.*, 17 Wall. 294, and *Stockdale* v. *Atlantic Ins. Co.*, 20 Wall. 323, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The judgment of the Circuit Court is reversed upon the authority of *Barnes* v. *Railroad Co.*, 17 Wall. 294, and *Stockdale* v. *Atlantic Insurance Co.*, 20 Wall. 323, decided at the last term, and the cause remanded with instructions to enter judgment in favor of the defendant.

Mr. Attorney General for plaintiff in error.

Mr. C. E. Whitehead, Mr. F. M. Pixley and *Mr. H. J. Tilden* for defendant in error.

LANE *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 176. Argued December 9 and 10, 1874. — Decided January 18, 1875.

Haycraft v. *United States*, 22 Wall. 81, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This action, like that of *Haycraft* v. *United States*, in which the opinion has just been read (22 Wall. 81), was commenced in the Court of Claims, after the expiration of two years from the close of the rebellion, to recover the proceeds of the sale of cotton taken under the authority of the captured and abandoned act. The judgment of the Court of Claims is affirmed for the reasons assigned in that opinion.

Mr. T. W. Bariley and *Mr. S. E. Jenner* for appellants.

Mr. Attorney General for appellee.

BAILEY *v.* WORK.

ERROR TO CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 540. Argued March 30, 1875. — Decided April 12, 1875.

Bailey v. *Clark*, 21 Wall. 284, followed.

MR. JUSTICE FIELD delivered the opinion of the court.

This case involves the same question which was considered and determined in the case of *Bailey* v. *Clark*, 21 Wall. 284, just decided, and upon the authority of that case the judgment is

Affirmed.

Mr. Attorney General for plaintiff in error.

Mr. J. E. Burrill for defendant in error.

BLAKE *v.* FOURTH NATIONAL BANK.

BLAKE *v.* PARK BANK.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

KENNY *v.* PHILADELPHIA &c. RAILROAD.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Nos. 554, 555 and 318. Argued February 19, 1875. — Decided March 22, 1875.

Blake v. *National Banks*, 23 Wall. 307, followed.

MR. JUSTICE HUNT delivered the opinion of the court.

These cases involve the same principles as the case of the National City Bank, (*Blake* v. *National Banks*, 23 Wall. 307,) and the judgment in each case is *Reversed.*

Mr. Attorney General for plaintiffs in error.

Mr. Charles C. Beaman, Jr., and *Mr. Francis C. Barlow* for the Banks, and *Mr. James E. Gowen* for the Railroad Co.

WINDSOR *v.* McVEIGH.

ERROR TO THE CORPORATION COURT OF THE CITY OF ALEXANDRIA.

No. 583. Submitted April 9, 1875. — Decided May 3, 1875.

Gregory v. *McVeigh*, 23 Wall. 294, followed.

MOTION TO DISMISS.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The motion to dismiss this writ of error was submitted with a similar motion in *Gregory* v. *McVeigh*, 23 Wall. 294, just decided. In the argument, counsel on both sides have treated the two cases as though they were in all respects identical.

We, therefore, deny the motion for the reasons assigned in the other case. *Denied.*

Mr. S. F. Beach for plaintiff in error.

Mr. P. Phillips and *Mr. John Howard* for defendant in error.

COMMERCIAL BANK OF CLEVELAND *v.* IOLA.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 741. Submitted December 9, 1874. — Decided February 1, 1875.

Loan Association v. *Topeka*, 20 Wall. 655, followed.

MR. JUSTICE MILLER delivered the opinion of the court.

The only difference between this case and that of *The Citizens' Bank* v. *Topeka*, just decided, (*Loan Association* v. *Topeka*, 20 Wall. 655,) is that the bonds were issued before the general act of February 29, 1872, there being at that time no statute of Kansas which professed to authorize the proceeding. But after the vote in favor of issuing the bonds, an act of the legislature ratified the vote and authorized the city officers to deliver the bonds and to levy the taxes necessary to pay their principal and interest. They were issued to a private corporation to aid in constructing and operating foundry and machine shops.

This is all that is necessary to be said, and it shows that the

case comes within the principles of the one just decided, and that the judgment of the Circuit Court holding the bonds void must be *Affirmed.*

Mr. Alfred Ennis for plaintiff in error.

Mr. A. L. Williams for defendant in error.

THE ELIZA HANCOX *v.* LANGDON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 36. Argued November 9 and 10, 1875. — Decided November 15, 1875.

The decree below is affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is one of a class of cases in admiralty, in which appeals are taken to this court upon questions of fact when there have been two concurring opinions in the court below. We think the finding below, as to the culpable fault of the Hancox, was clearly right, and are not satisfied that, as to the damages, it was wrong.

The decree of the Circuit Court is *Affirmed.*

Mr. E. C. Benedict and *Mr. Robert Failigant* for appellant.

Mr. Rufus E. Lester and *Mr. William U. Garrard* for appellee.

TURNER *v.* WARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

No. 129. Argued and submitted January 31, 1876. — Decided February 14, 1876.

In a suit in equity to set aside a sale of personal property as induced by false representations, a decree in favor of the plaintiff will be sustained if the representations proved are of the same general character as those averred in the bill, though not in its precise language.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case presents for our consideration little else than a question of fact. The plaintiffs charge in substance that they were induced by false representations to sell the defendants certain goods, and asked to have the contract of sale rescinded, and their goods restored. The testimony is all embraced in the depositions of one of the plaintiffs and one of the defendants and an agreed statement. There is some discrepancy between the statements of

the two witnesses, but it is apparent from the testimony of the defendant, who made the representations complained of, that he himself had been deceived in respect to the pecuniary condition of his firm. It would be but natural, therefore, that he should mislead the plaintiffs. He supposed the firm had stock on hand to the amount of twenty or twenty-five thousand dollars, and owed from five to eight thousand. According to his own statement, he so told the plaintiff. In point of fact, he was mistaken, and his statement was untrue. The firm was largely in debt, and in less than sixty days it failed and made an assignment. Before this, however, it executed two chattel mortgages upon the stock, each purporting upon its face to secure the payment of ten thousand dollars, though it appears that the amount actually owing to the mortgagees was not so much.

The representations proven are not in the precise language of those averred in the bill, but they are of the same general character, and in our opinion, sufficient to justify the decree rendered in the court below, and it is, therefore, *Affirmed.*

Mr. Charles P. Crosby, Mr. J. M. Carlisle and *Mr. J. D. McPherson* for appellants.

Mr. Ashley Pond and *Mr. Henry B. Brown* for appellees.

CRARY *v.* DEVLIN.

ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

No. 527. Submitted January 31, 1876. — Decided February 21, 1876.

Dismissed on the authority of *Mining Co.* v. *Boggs*, 3 Wall. 304.

The finding by a state court that the facts on which a party relies to bring his case within a statute of the United States do not exist is no decision against the validity of that statute.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The motion to dismiss this cause is granted upon the authority of *Mining Co.* v. *Boggs*, 3 Wall. 304. There could have been no decision of the Court of Appeals against the validity of any statute of the United States, because it was found that the facts upon which the defendants below relied to bring their case within the statute in question did not exist. The judgment did not deny the validity of the statute, but the existence of the facts necessary to bring the case within its operation. *Dismissed.*

Mr. Edward T. Wood, Mr. Lyman Elmore and *Mr. M. H. Carpenter* for plaintiffs in error.

Mr. R. Fendall for defendant in error.

ATHERTON *v.* FOWLER.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 648. Submitted November 15, 1875. — Decided December 6, 1875.

Atherton v. *Fowler*, 91 U. S. 143, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The motion to dismiss this cause for want of jurisdiction is denied for the reasons stated in the opinion just read, *Atherton* v. *Fowler*, 91 U. S. 143. The cases are in all material respects identical. *Motion denied.*

Mr. M. Blair for plaintiffs in error.

Mr. M. A. Wheaton for defendants in error.

MEAD *v.* PINYARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

No. 754. Submitted January 20, 1876. — Decided February 7, 1876.

The proof does not make out a case that calls upon this court to overrule the judgment of the trial court on questions of fact.

THE case is stated in the opinion.

MR. JUSTICE HUNT delivered the opinion of the court.

The appeal in this case is based chiefly upon alleged errors of the court below in determining the facts. The points of fact most strongly presented, in which it is alleged that the error was committed, are the following:

1. The finding that the contract held by Collins was assigned and delivered by him to his sister, Mrs. Gamble, in November, 1862; 2. The finding that Willard did not, in June, 1861, convey by deed to Collins, the property described in his contract; and 3dly, The denial of the statement that Willard, after having held his deed unrecorded for about a year, returned it to Collins and had another deed made to Mrs. Gamble. The importance of these propositions of fact is undoubted.

If title had been vested in Collins by the delivery of a deed from Willard, it could not be devested, except by a deed signed and sealed by Collins. Handing back the deed received by him would not produce that result. A new deed, therefore, from Willard to Mrs. Gamble, would be entirely ineffectual. Nothing would pass by it. The performance of the contract on his part by Pinyard,

and which performance must be made out to enable him to sustain this action, depends upon the validity of the deed from Collins to Mrs. Gamble. The fact disputed is, therefore, the point upon which the case turns.

We do not, however, agree with the appellants in their estimate of the testimony. Willard and Collins are the only persons who could certainly know how the fact was. They were both called as witnesses, and testified on the subject. Collins testified positively and explicitly, as of his own knowledge and recollection, that the assignment to Mrs. Gamble was made at its date, in 1862; that no deed was ever made to him by Willard or to his wife, but that the deed was made to Mrs. Gamble in 1863. He denies that he ever made any statement to the contrary to John R. Parsons.

Willard testifies that he gave a deed to Collins, which was afterwards returned to him, and a deed made, at his request, in the name of Mrs. Gamble. Parsons testified that Collins told him, in December, 1862, that he had a deed of the premises, and that he received them free and clear.

There are many circumstances connected with the evidence of the witnesses to which it is not necessary to allude. It may, however, be mentioned that Mr. Willard admits that he afterwards gave a third deed of the same premises to Mr. Parsons. Mr. Parsons is one of the prominent actors in the drama throughout, and a party defendant in the suit. Again, no trace or memorandum is pretended to be found of the existence of the deed said to have been given to Mr. Collins. Mr. Willard was a business man, a real estate dealer; he always made duplicates of his contracts and preserved all his papers, occasionally overhauling them and burning up. It would be quite likely, if such a prior deed had been made, that there would have been some sign of it remaining. This witness testifies, after the lapse of ten years, (as all of them do,) after having suffered severely from malarial fever, from cerebro-spinal-meningitis, which affected him so seriously that a commission of lunacy was issued against him, and his property was given in charge of a commission.

We certainly do not see a case that calls upon us to overrule the judgment of the court trying the cause, upon these questions of fact.

It is strenuously insisted again, by the appellants, that Pinyard never performed that part of his contract where he agreed that "the title to the premises deeded to Spallinger should be perfected and the mortgage settled between A. M. Collins and Parsons." If

it became clear that the Parson mortgage was invalid, and if the possession of the premises was placed in Spallinger, as his assignee, and that the title was completed to their satisfaction or that their conduct was such as to create a satisfaction in law of their rights under this covenant, the mortgage will be deemed to have been "settled."

The court below found as a fact, and we believe correctly, that when Collins gave the mortgage referred to he had no title to the premises mortgaged, either legal or equitable. As he never received a deed to himself from Willard he never had the legal title. His equitable title was based upon the contract of purchase and sale executed to him by Willard, but this he had assigned to Mrs. Gamble in November, 1862, while his mortgage to Parsons was not executed until a period subsequent to that date. When he executed the mortgage to Parsons he had no title to the premises mortgaged, either legal or equitable. There was nothing to settle.

This property in question under the mortgage to Parsons was the same that was conveyed by Willard to Mrs. Gamble. She conveyed to Pinyard and Pinyard to Spallinger, in performance of the contract to enforce which this suit is brought. As has been stated, Collins having no title, legal or equitable, made a mortgage upon the same to John R. Parsons. A contest arose between Parsons and Spallinger which became the subject of a foreclosure suit, an ejectment and a forcible entry and detainer. This was while Spallinger was the owner under his deed from Mrs. Gamble, and he was the party to these contests against one Hubbard, in possession under Parsons, who defended the suit. Spallinger was at first unsuccessful, but finally regained possession, moving upon the premises, as Collins testifies, with his wife, children and furniture. Spallinger continued in possession until he left for parts unknown. While having the title and being thus in possession he settled the difficulties with Hubbard and sold to the defendant the Reed contract for the farm he had previously sold to Pinyard, and disappeared.

This seems to dispose of the difficulty. Spallinger settled his controversies with Hubbard and Parsons as he thought best, and if the defendants are his representatives by assignment or otherwise, settlement is conclusive upon them. If Spallinger made no transfer of his contract with Pinyard, as we understand to be the fact, then no one represents him, and the difficulty is settled by the acquiescence of the only person interested. Neither Mr. Mead, Mr. Parsons, Mr. Gates or Mr. Bill had anything to do with the mat-

ter. Pinyard testifies that he gave a warranty deed to Spallinger, and that he seemed to be entirely satisfied, and that he never requested that anything further should be done.

Pinyard alleges in the complaint that Spallinger conveyed the lot to Parsons. This Parsons in his answer denies. It is not alleged by any one, so far as we can discover, that Spallinger gave to any person an interest in or claim growing out of the covenant referred to. All questions upon the contract between Pinyard and Spallinger and its performance, may be considered as at an end.

We agree with the court below that the equities are strongly in favor of Pinyard, and we see no legal objections to their enforcement.

The decree of the court below is *Affirmed.*

Mr. E. S. Smith for appellants.

Mr. J. B. Fitzgerald and *Mr. Edward Bacon* for appellee.

BERREYESA *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

No. 33. Argued November 2 and 3, 1876. — Decided December 11, 1876.

When it does not appear that a grant from the Mexican Republic had been deposited and recorded in the proper public office, among the public archives of the republic, this court must decide adversely to a claim under it.

Mr. Chief Justice Waite delivered the opinion of the court.

Notwithstanding the great ability with which this cause has been argued before us on behalf of the appellant, we are unable to distinguish it from a large number of cases to be found in our reports, in which we have felt compelled to decide adversely to claims made under alleged Mexican grants, because it did not appear that a grant from the Mexican government had been "deposited and recorded in the proper public office among the public archives of the republic." (*United States* v. *Cambuston*, 20 How. 64; *United States* v. *Castro*, 24 How. 349; *United States* v. *Knight, Adm.*, 1 Black, 251; *Peralta* v. *United States*, 3 Wall. 440.)

The decree of the District Court is, therefore, affirmed upon the authority of those cases. *Affirmed.*

Mr. H. W. Carpenter and *Mr. P. Phillips* for appellant.

Mr. Attorney General, Mr. Montgomery Blair and *Mr. S. O. Houghton* for appellee,

HERHOLD *v.* UPTON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 125. Submitted November 29, 1876. — Decided December 4, 1876.

Upton v. *Tribilcock*, 91 U. S. 45; *Sanger* v. *Upton*, 91 U. S. 56; and *Webster* v. *Upton*, 91. U. S. 65, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The principles decided in *Upton* v. *Tribilcock*, 91 U. S. 45; *Sanger* v. *Upton*, 91 U. S. 56; and *Webster* v. *Upton*, 91 U. S. 65, are conclusive of this case. The judgment of the Circuit Court is, therefore, affirmed upon the authority of those cases. If the stock held by Herhold is part of the increased capital, he is estopped by his acceptance of the certificate from denying the regularity of the proceedings under which the increase was effected. If it is part of the original stock, his liability exists whether the increase was made or not. In either event the testimony offered to show that he did not sign the assent to the increase of the capital stock, filed with the auditor of public accounts, was immaterial and properly excluded. *Affirmed.*

Mr. E. A. Otis for plaintiff in error.

Mr. L. H. Boutell for defendant in error.

MACKALL *v.* RICHARDS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 184. Argued and submitted March 15, 1877. — Decided March 19, 1877.

Affirmed upon the facts.

MR. CHIEF JUSTICE WAITE announced the opinion of the court.

This record presents for our consideration only a question of fact, and without discussing the testimony it is sufficient to say that after a careful examination of the case we are entirely satisfied with the decree below, which is consequently affirmed. No further opinion will be delivered. *Affirmed.*

Mr. C. Ingle for appellants.

Mr. W. B. Webb and *Mr. Thomas Wilson* for appellees.

JOHANSSON *v.* STEPHANSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 194. Argued March 23 and 26, 1877. — Decided April 9, 1877.

The decree below is affirmed upon the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We have carefully examined the voluminous record in this case, and while it is possible that the appellee took advantage of the inexperience of the appellant, and of his ignorance of the country in which he was, to secure an advantageous bargain, the evidence fails to show such fraud or misrepresentation as would justify us, under the established rules of equity jurisprudence by which our judgment must be governed, in decreeing a rescission of the contract, executed as it has been and acted upon by the parties. Many of the representations complained of are clearly nothing more than expressions of opinion. The appellant was taken to and shown the property before the bargain was concluded. The only fact about which there seems really to have been an error in statement was as to the boundary of the land on the river, and if that had been correctly described we do not think it would have changed the conduct of the parties. As to the overflow of the land and the health of the locality, the truth seems to have been stated in respect to the past and an opinion only given as to the probabilities in the future. *We must, therefore, affirm the decree.*

Mr. S. Corning Judd for appellant.

Mr. H. G. Miller and *Mr. Thomas G. Frost* for appellee.

DAVIES *v.* SLIDELL.

HUPPENBAUR *v.* SLIDELL.

AMES *v.* SLIDELL'S HEIRS.

SAME *v.* SAME.

ERROR TO THE SUPREME COURT OF LOUISIANA.

Nos. 417, 435, 668 and 669. Submitted November 20, 1876. — Decided November 27, 1876.

Affirmed upon the authority of *Bigelow* v. *Forrest*, 9 Wall. 339; *Day* v. *Micou*, 18 Wall. 156; and *Wallach* v. *Van Riswick*, 92 U. S. 202.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We are not inclined to hear a re-argument of the Federal ques-

tions presented by the records in these cases. They were decided in *Bigelow* v. *Forrest*, 9 Wall. 339; *Day* v. *Micou*, 18 Wall. 156; and *Wallach* v. *Van Riswick*, 92 U. S. 202. The court below has followed these decisions, with which we are entirely satisfied.

We, therefore, affirm the judgment in each of the several cases, under the practice authorized by the amendment to Rule 6, section 3, promulgated at the last term. *Affirmed.*

Mr. L. Madison Day, *Mr. D. C. Labatt*, *Mr. T. J. Durant* and *Mr. Charles W. Hornor* for plaintiffs in error.

Mr. Thomas Allen Clarke for defendants in error.

MORRILL *v.* WISCONSIN.

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

No. 685. Submitted March 14, 1877.—Decided March 19, 1877.

Welton v. *Missouri*, 91 U. S. 275, followed.

MR. CHIEF JUSTICE WAITE announced the opinion of the court.

The judgment in this case is reversed, upon the authority of *Welton* v. *Missouri*, 91 U. S. 275, which has already been followed by the Supreme Court of Wisconsin in *Van Buren* v. *Downing*, decided since this writ of error was taken and not yet reported.

The cause is remanded with instructions to enter a judgment reversing the judgment of the Circuit Court and directing that court to discharge the defendant from imprisonment and suffer him to depart without day. *Reversed.*

Mr. J. P. C. Cottrill for plaintiff in error.

Mr. I. C. Sloan for defendant in error.

PITTSBURGH LOCOMOTIVE AND CAR WORKS *v.* NATIONAL BANK OF KEOKUK.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

No. 718. Submitted April 30, 1877.—Decided May 7, 1877.

Dismissed because the jurisdictional amount is not involved. *Bennett* v. *Butterworth*, 8 How. 124, distinguished.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The motion to dismiss this case is granted. The only matter in dispute between the parties is the judgment of $1508, recovered against the plaintiff in error and the surety upon the delivery

bond. The plaintiff has the possession of the property, and both that and the ownership have been adjudged in its favor, except to the extent of the lien which the defendants have to secure the payment of the judgment. Of this the defendants do not complain, so that the only question brought here for us to decide is whether the judgment for the money was properly rendered against the plaintiff. This is not sufficient in amount to give us jurisdiction. The case is not one where the value of the property in controversy shows the value of the matter in dispute, as was that of *Bennett* v. *Butterworth*, 8 How. 124, 128, relied upon by the counsel for the plaintiff. *Dismissed.*

Mr. H. Scott Howell for plaintiff in error.

Mr. James H. Anderson for defendant in error.

VAN NORDEN *v.* WASHBURN.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 795. Submitted April 23, 1877. — Decided April 30, 1877.

Van Norden v. *Benner*, 131 U. S. clxv., followed.

Mr. Chief Justice Waite delivered the opinion of the court.

This case is in all its material facts precisely like that of the same plaintiffs in error against Benner, just decided, and is dismissed for the reasons stated in that opinion.

Mr. Thomas J. Durant and *Mr. Charles W. Hornor* for plaintiffs in error.

Mr. Charles B. Singleton, *Mr. Samuel Shellabarger* and *Mr. J. M. Wilson* for defendant in error.

HAYNES *v.* PICKETT.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 837. Submitted January 15, 1877. — Decided March 13, 1877.

Ray v. *Norseworthy*, 23 Wall. 128, followed.

Mr. Chief Justice Waite delivered the opinion of the court.

There is a Federal question in this case, but it was decided in *Ray* v. *Norseworthy*, 23 Wall. 128, and we are not inclined to hear it re-argued. The motion to dismiss is, therefore, denied, and that to affirm granted, upon the authority of that case. *Affirmed.*

Mr. B. R. Forman for plaintiff in error.

Mr. Thomas J. Durant and *Mr. Charles W. Hornor* for defendants in error.

McCREADY *v.* VIRGINIA.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

No. 902. Stipulation to abide decision in No. 625 filed April 6, 1877. — Decided April 30, 1877.

McCready v. *Virginia*, 94 U. S. 391, followed by stipulation of parties.

MR. CHIEF JUSTICE WAITE announced the judgment of the court.

The parties having stipulated that this case shall abide the event of that just decided, (No. 625,) *McCready* v. *Virginia*, 94 U. S. 391, the judgment of the Supreme Court of Appeals of Virginia is affirmed.

Mr. L. R. Page and *Mr. Robert Ould* for plaintiff in error.

Mr. R. I. Daniel for defendant in error.

FIRST NATIONAL BANK OF CINCINNATI *v.* COOK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

No. 182. Argued January 28, 1878. — Decided February 11, 1878.

The order of the Circuit Court in this case, directing an assignment to the trustees in bankruptcy of the judgment against the oil company on bills transferred by the bankrupt to the appellant, is affirmed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

All the questions involved in this case were considered and decided at the present term in *Merchants' National Bank* v. *Cook*, 95 U. S. 342, and *West Philadelphia Bank* v. *Dickson*, 95 U. S. 180, except that which relates to the order of the Circuit Court directing an assignment to the trustees in bankruptcy of the judgment against the Ohio Lard and Sperm Oil Company upon the bills of that company, transferred by the bankrupt to the appellant with the other securities, and as to this we see no error in the action of the court below. The transfer of these bills as well as the others was void under the bankrupt law, and the title to them passed to the trustees in bankruptcy when appointed. The fact that in the hands of the bankrupt or his assignees the bills may not be good against the oil company does not affect this case. The bills whether good or bad belonged to the trustees, who have consequently the right to the judgment into which they have been merged. Whether the oil company will have the same defences

to the judgment in the hands of the trustees that it would have had to the bills before judgment, is a question which we need not now decide. It is certain that the appellant cannot hold the judgment as against the trustees, any more than it could the bills.

The decree is affirmed.

Mr. T. D. Lincoln for appellant.

Mr. George Hoadly and *Mr. Edgar M. Johnson* for appellees.

CORRY *v.* CAMPBELL.

ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

No 187. Argued February 12, 1878.—Decided February 18, 1878.

Affirmed on the authority of *Davidson* v. *New Orleans*, 96 U. S. 97.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The only Federal question presented by this record was decided at the present term in *Davidson* v. *New Orleans*, 96 U. S. 97, and the judgment is affirmed upon that authority. We have no power to correct the errors of state courts in respect to the details of assessments made by municipal corporations upon private property to defray the expenses of street improvements. Upon all such questions the action of the state court is final. There can be no doubt but that our jurisdiction is at an end if we find that sufficient provision has been made by law for contesting such a charge, when imposed, by an appropriate adversary proceeding in the ordinary courts of justice. *Affirmed.*

Mr. John W. Okey, Mr. Thos. L. Young and *Mr. Wm. M. Corry* for plaintiff in error.

Mr. T. B. Paxton, Mr. E. A. Ferguson and *Mr. J. W. Warrington* for defendant in error.

HUTCHINSON *v.* THE NORTHFIELD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 213. Argued February 7 and 8, 1878.—Decided February 18, 1878.

On a review of the facts it is held that the Northfield was free from fault and the decree below is affirmed.

THE case is stated in the opinion.

MR. JUSTICE HUNT delivered the opinion of the court.

The leading facts in this case were concurred in by the District Court and by the Circuit Court. Upon a careful review we are of the opinion that the conclusions reached were correct.

The schooner was free from fault, and her owner is confessedly entitled to his damages for her loss.

The misconduct of the Hunter (the tug) is so clearly established that it would be time wasted to illustrate it, and while the absence of fault on the part of the Northfield is a subject of more strenuous contention, we do not find much difficulty on that point.

The charges against her are, that she ran at too great speed, and that she held her speed too long.

She was a ferry boat running between New York and Staten Island, her ordinary rate of speed being sixteen miles to the hour, or thereabouts. On this occasion she put out of her New York slip at that rate of speed, with a helm partly ported, in the forenoon of a pleasant day, on an ebb tide, with smooth water, heading about southwest, with the tug and its tow on her starboard side and in full view. She made her speed and her course with deliberation and upon the facts as they were before her. Her officers perfectly understood that under the 13th of the sailing rules the responsibility devolved on her of keeping out of the way of the tug. The officers of the tug also perfectly understood that under the 18th of the same rules it was their duty to keep the tug on its course. The officers of each vessel had the right to assume that the other vessel would do its duty, and to make their course and keep their speed upon that assumption. The evidence shows that the two vessels kept their courses and their speed, the tug going from four to six miles per hour, until the Northfield was within some eight hundred or nine hundred feet of the tug, when the latter stopped, so that, as the captain of the lost schooner says, she lay perfectly still on the water and ported her helm. The Northfield at once reversed her engine, but could not check her speed sufficiently to prevent a collision, and struck the schooner just forward of the mizzen rigging, about thirty feet from her stern, the schooner projecting aft of the tug.

If the tug had made thirty feet while the Northfield was making eight hundred feet, between the stopping of the tug and the collision, it is plain there would have been no collision. If the speed of the tug was five miles to the hour, it would have been about one-third of that of the Northfield, if not stopped or checked, and she would have gone one-third of this distance, that is, two hundred and sixty-three feet, before the Northfield could have reached her by traversing the eight hundred feet. All this was evident to the experienced eye of the manager of the Northfield, and no negligence can be charged in relying and acting upon it.

If the tug was moving at the speed of two miles only to the hour, as is assumed in some places, the proposition would not be so manifest, but the fault on the one side and the accurate judgment on the other would be equally certain. The convergence of the lines would have caused no material difference in the position of the vessel.

It is not alleged in the briefs that the failure of the engine of the Northfield to turn on its centre, by which the reverse motion could have been sooner obtained, is evidence of a defective machine, or of improper management of it. It is alleged simply as evidence of unreasonable speed, by which the prompt handling of the vessel was embarrassed.

This depends entirely upon the suggestions already discussed, and if the speed was reasonable, the course correct and the judgment wise, the failure of the engine to act as desired is an incidental result merely and no fault in consequence of it can be charged upon the Northfield.

There was no good reason at any time to suppose that the Northfield intended to cross the bows of the tow. As she came out of her slip she headed to the south, swinging gradually to the west, and for a time her course pointed across the bow of the tow; but this was temporary, and was constantly altering. The attempt thus to cross would have been rash and attended with many dangers, and never was, in fact, entertained for a moment by the Northfield.

We are of the opinion that the Northfield was free from fault, and that the decree should be *Affirmed.*

Mr. Henry J. Scudder and *Mr. James C. Carter* for appellant.

Mr. W. A. Beach and *Mr. Miles Beach* for appellee.

CLARK *v.* BEECHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 214. Argued February 8, 1878. — Decided March 25, 1878.

A decree setting aside a conveyance by a bankrupt to his wife as fraudulent is sustained; but it is also held that a personal decree against her for rents, issues and profits, and for the use and occupation of the premises was error.

Mr. Justice Swayne delivered the opinion of the court.

The bill charges that a fraudulent settlement was made by

Abraham Clark, the bankrupt, upon the appellant, his wife. The Circuit Court decreed against her and she brought the case here for review.

Recently several of these cases in their aspects of both fact and law have been very fully considered by this court.

Each controversy must necessarily depend for its termination upon its own facts and circumstances. The rules of law which apply are well settled. In this case nothing could be gained either to the profession or the parties by going in detail over the facts or the law, however elaborately the work was done.

We, therefore, deem it sufficient to say that we are satisfied with the judgment of the Circuit Court upon the main point brought before it for consideration. We think the conveyance complained of was properly condemned as fraudulent, and, therefore, held to be void.

But it is equally clear that the personal decree against the appellant for the rents, issues and profits, and the use and occupation of the premises, was erroneous.

Upon this subject it is sufficient to refer to the opinion of this court in the cases of *Phipps* v. *Sedgwick*, and of *Place* v. *Sedgwick*, 95 U. S. 3, and to the opinion in the *United States Trust Company* v. *Sedgwick*, 97 U. S. 304, just delivered.

This case will be remanded to the Circuit Court, with directions to modify the decree in conformity to this opinion.

Mr. Luther R. Marsh and *Mr. W. F. Shepherd* for appellant.

Mr. Francis N. Bangs for appellee.

STRONG *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 87. Submitted January 14, 1878.—Decided February 11, 1878.

By the terms of a charter party to the United States, the owner of a vessel undertook to keep her tight, staunch, strong and sound, and her machinery, boilers and everything pertaining to her in perfect working order, and to provide her with everything necessary for efficient sea-service. The government undertook to deliver the vessel to the owner in New York at the expiration of the charter party in as good condition as she was at the signing of it, ordinary wear and tear, damage by the elements, bursting of boilers, breaking of machinery excepted. The vessel was injured and sunk by a marine risk assumed by the charterer while engaged in the transportation of stores and men in the waters of North Carolina. She was raised and taken to New Berne, where she was tem-

porarily repaired by the government; but, being found out of order, was discharged at Port Royal by the government, and taken to New York by the owner. *Held*, that by reason of the failure of the owner to keep the vessel tight, staunch, strong and sound, the government was relieved from its liability to deliver the vessel to the owner in New York.

MR. JUSTICE HARLAN delivered the opinion of the court.

In this action upon a charter party, executed March 15, 1862, between Strong and the United States, for the use of his steamer Ocean Wave, he asks judgment for the amount he expended in repairing her after she had been discharged from the service of the government, and also for *per-diem* compensation, at the rate fixed in the contract, for the time occupied in taking her from Port Royal, North Carolina, to New York, and in repairing her.

The Court of Claims was equally divided upon the question of his right to recover, and his petition was dismissed.

By the terms of the charter party the government was entitled to the whole and exclusive use of the steamer during the term she was in its service. To the extent of her capacity, it was the duty of Strong to receive and transport all the "passengers" and the "stores, wares and merchandise" which the government might send to her. Her use was not limited to any particular waters, and as it was clearly within the contemplation of the contracting parties that she would be employed in aid of the military forces then engaged in the war for the maintenance of the Union, sending her to the waters of North Carolina and there employing her for the transportation of stores and men were clearly authorized by the charter party. Munitions of war were "stores," and soldiers, "passengers," within the meaning of that instrument.

Nor was it an unauthorized use of the vessel to send her up the Neuse River with other boats, on the expedition ordered in December, 1862, by General Foster, of the Federal forces. Before starting, a thirty-pound Parrott gun and its carriage, such as are used on naval vessels, together with ammunition for the gun, and seventeen artillerymen, with their small arms and provisions for the expedition were put on board. The presence of the artillerymen on the vessel was certainly not inconsistent with the terms of the charter party. In reference to the gun, it is claimed by Strong that the vessel had not the capacity to bear safely such a heavy piece of artillery, and, consequently, that such a use of her was prohibited by the charter party. Her captain objected at the time to the gun being placed on her, but his objections were disregarded. It is not stated in the findings whether the gun was placed on the

vessel for her protection, or for offensive operations against the rebels. But it is found that after she left the vicinity of the rebel fort, the reduction of which seemed to be the object of the expedition, the gun was used to meet an attack of rebel infantry, who fired from the shore into the vessel. The concussion of the firing "swept off the bulwarks and netting in the track of the explosion," and one of the effects was "to start the joiner work, and to break in some of the panels of the doors, and to take a part of the rail off." Upon the same occasion she struck an overhanging tree, which took off a part of the wheel house and swept off both of the flagstaffs, and all the awning stanchions. Proceeding down the river, and when three miles above New Berne, she struck a snag and sunk. She was raised and taken to New Berne, and there "temporarily repaired by the government."

Casualties such as striking trees and snags, and sinking, were clearly marine risks which the owner expressly assumed, and the fact that during the expedition when they occurred the vessel was managed by a pilot placed on her by the government officers cannot affect the rights of the parties. The captain does not appear to have made any objection to such a pilot, nor is it claimed that the latter was negligent or unskilful in the discharge of his duty. On the contrary, he belonged to the neighborhood, and was familiar with the river. In regard to the claim for damages resulting from the firing of the gun, we remark that if such use of the vessel were conceded to be in violation of the charter party, we should be unable to ascertain from the record the amount of those damages. How far they were met by the temporary repairs made by the government, upon the return of the vessel from the expedition, is not stated. When she reached New York, after having been discharged from service, it is stated in the findings that she was "generally repaired throughout." What portion of these general repairs was chargeable to the injuries occasioned by the marine risks which the owner assumed, and what portion, if any, was chargeable to the injuries caused by war risks which the government assumed, cannot be determined from the record.

The only question which remains to be considered, is that arising on the asserted liability of the government for the *per-diem* compensation for the time spent in taking the vessel from Port Royal, and in repairing her in New York. The charter party, it is true, expressly provided that she "was to be delivered to the owner in the port of New York, at the expiration of the charter, in as good condition" as she was at its date, "ordinary wear and tear, damage

by the elements, bursting of boilers, breaking of machinery, excepted." In view of this stipulation, was the government, under the facts established, relieved from the duty of delivering her at New York? We think it was. By the terms of the charter party the owner was bound, at his own expense, to keep the vessel tight, staunch, strong and sound, and her machinery, boilers and everything pertaining to her in perfect working order, and to provide her with everything necessary for efficient sea-service. Any time which might be lost by reason of the machinery not being in order was to be deducted from the amount claimed to be due at the expiration of the charter. Now, it appears that on the 4th of March, 1863, the vessel was out of order and condemned by the government inspectors, and for those reasons was discharged at Port Royal from the service of the government. It does not appear that this condemnation was improper or unjust. It is not pretended that she was at that time fit for efficient sea-service. The agreement of the government to pay two hundred dollars per day for the use of the vessel was upon the condition — whether precedent or concurrent is immaterial — that the owner would keep her in good order. His neglect of that duty, by reason of which she became unsafe and worthless for the purposes for which she had been hired, authorized the government to abandon the contract and discharge her from its service. Its obligation to deliver her at New York was concurrent only with his to keep her in proper condition, and inasmuch as she was out of order and unfit for use, it had the right to discharge her at Port Royal, and was relieved from the duty of delivering her to him at New York. His refusal to execute the contract gave the government the option to rescind it.

Judgment affirmed.

Mr. Thomas J. Durant and *Mr. Charles W. Hornor* for appellant.

Mr. Attorney General and *Mr. Assistant Attorney General Smith* for appellee.

GOODENOUGH HORSE-SHOE MANUFACTURING CO. *v.* RHODE ISLAND HORSE-SHOE CO.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 665. Submitted October 15, 1877. — Decided November 5, 1877.

Until the record of a judgment in a state court which this court is called upon to examine discloses the question necessary to give it jurisdiction, this court cannot proceed.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The Rhode Island Horse-Shoe Company, a citizen of Rhode Island, sued the Goodenough Horse-Shoe Manufacturing Company, a citizen of New York, in the Supreme Court of the State of New York to recover an amount alleged to be due upon an account for goods sold. Summons was served September 14, 1876, and October 5, 1876, judgment was rendered against the defendant upon default, in accordance with law and the practice of the court in such cases. The record of the judgment as sent here shows this state of facts and nothing more.

On the 9th of October the defendant moved the court to vacate the judgment, and in support of that motion produced affidavits tending to prove that on the 3d of October it had filed its petition for the removal of the cause to the Circuit Court of the United States. No effort was made, however, to correct the record as it stood so as to disclose this fact. This motion being denied the defendant below sued out this writ of error which the plaintiff now moves to dismiss for want of jurisdiction.

We can only reëxamine the final judgment in the suit, and for that purpose must look alone to the record of that judgment as it is sent to us. If parts of the record below are omitted in the transcript we may by *certiorari* have the omissions supplied, but we cannot here correct errors which actually exist in the record as it stands in the state court. For that purpose application must be made there, and, if necessary, upon sufficient showing we may remand the case in order that the court may proceed.

In this case the judgment was rendered October 5, and the record of the *judgment* stopped then. What took place afterwards was nothing more than an attempt to avoid the judgment. The facts which it is claimed give us jurisdiction appear only in the record of this subsequent proceeding, over which we have no supervision. If the defendant below desires to bring the case here it must take the necessary steps to correct the record, if in fact any error exists, so as to present the question it seeks to have decided. It is unnecessary for us to determine how this may be done or whether the courts of the United States have authority to require the state court to act in that regard. All we do decide is that until the record of the judgment we are called upon to examine discloses the question necessary to give us jurisdiction, we cannot proceed.

The motion to dismiss for want of jurisdiction is granted.

Mr. H. M. Ruggles for plaintiff in error.

Mr. Charles Tracy for defendant in error.

UNITED STATES *v.* ATCHISON, TOPEKA &c. RAILROAD CO.

APPEAL FROM THE COURT OF CLAIMS.

No. 875. Submitted February 20, 1878. — Decided April 8, 1878.

The mandate of this court in this case was fully complied with by the Court of Claims.

THE case is stated in the opinion of the court.

MR. JUSTICE FIELD delivered the opinion of the court.

The question originally involved in this case, and decided at the October Term of 1876, was whether the provision contained in the land grant to the company, that its road should be a public highway for the use of the government of the United States, free from all toll or other charge for the transportation of its property and troops, not only entitled it to the free use of the road, but also to have the transportation made by the company without charge. The company claimed that the use of the road was all that could be required of it. The government, insisting that it was also entitled to have such transportation without charge, refused compensation therefor, and referred the matter to the Court of Claims for determination. That court estimated the cost of the transportation according to the ordinary tariff rates of the road with other parties for similar services, after making a deduction of one-third from the rates. This deduction had been deemed by the War Department, upon careful consideration, to be the equivalent of any toll or charge for the use of the road itself, and upon that basis the services had been rendered. But the judges of the Court of Claims, being equally divided upon the question of the liability of the United States to make any compensation, gave judgment *pro forma* in their favor against the company. On appeal this court reversed the judgment, holding that the government was entitled only to the free use of the road, and that compensation must be made for the transportation, with a fair deduction for such use. The case was accordingly remanded with directions to enter a new decree awarding compensation with such deduction.

On the return of the case to the court below the claimant moved for judgment for the amount previously found according to the ordinary tariff rates less the deduction of one-third, as established by the War Department. By agreement of the parties such judgment was entered, the government reserving the right to show that a judgment for that amount was not required by the mandate of

this court, and, if it should be so decided, to try the question as to what was a fair deduction.

On the subsequent hearing of the point reserved, which was had upon a motion to set aside the judgment, the opinions of eminent "railroad experts" were read, by stipulation of the parties, to show what would be a fair deduction from the ordinary tariff rates for the use of the road. There would seem to have been some difference of opinion among the experts, but their evidence failed to show, in the opinion of the court, that the reduction agreed upon between the parties and the War Department was not a fair one. On the trial of the case it was not pretended by the claimant that the amount was arbitrarily fixed or that it was illegal or oppressive, or by the government that any greater reduction should have been made. Nor was the authority of the War Department to make an arrangement of this kind questioned, if under the law the government was liable for the transportation. If such authority do not now exist, as contended, under the subsequent legislation of Congress, and upon which point we express no opinion, there can be no doubt of its existence when the services were rendered for which compensation is claimed here.

We are of opinion that the mandate of this court was fully complied with by the Court of Claims, and its judgment is, therefore,

Affirmed.

Mr. Attorney General and *Mr. Assistant Attorney General Simons* for appellant.

Mr. Thomas H. Talbot for appellee.

INDIANAPOLIS & ST. LOUIS RAILROAD CO. *v.* VANCE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 897. Argued February 1, 1878.— Decided April 1, 1878.

Railroad Co. v. *Vance*, 96 U. S. 450, followed.

MR. JUSTICE HARLAN delivered the opinion of the court.

The decision just rendered in Case No. 896, 96 U. S. 450, between the same parties, controls the decision in this case.

Decree affirmed.

Mr. B. W. Hanna for appellant.

Mr. James K. Edsall for appellees

HAGAR *v.* CALIFORNIA.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

No. 898. Submitted October 15, 1877. — Decided November 12, 1878.

This court has no jurisdiction over a judgment of a state court when it does not appear that a Federal question was raised, and that it was either decided or necessarily involved in the judgment pronounced.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

It nowhere appears from this record that any Federal question was actually decided by the court below. None is specifically made by the pleadings, and we cannot find that any was raised under the general allegations in the answer or demurrer. The whole defence seems to have been predicated upon a supposed repugnancy between the law authorizing the assessment and the state constitution, and upon certain alleged irregularities in the proceedings under the law. It is not enough that a Federal question might have been raised. We have no jurisdiction unless it actually was raised and either decided or necessarily involved in the judgment pronounced. Mr. Justice Story, in *Crowell* v. *Randall*, 10 Peters, 368, decided in 1836, after reviewing all the cases down to that time, thus states the rule: "It is not sufficient to show that a question might have arisen or been applicable to the case, unless it is further shown, on the record, that it did arise and was applied by the state court to the case." To the same effect is *Edwards* v. *Elliott*, 21 Wall. 532, 558.

The motion to dismiss is granted.

Mr. Montgomery Blair for plaintiff in error.

Mr. A. A. Sargent, Mr. S. W. Sanderson and *Mr. Wm. Blanding* for defendants in error.

KEOGH *v.* ORIENT FIRE INS. CO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 917. Submitted January 14, 1878. — Decided January 28, 1878.

The facts stated in the opinion show that there is not a sufficient amount involved in this case to give this court jurisdiction.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We have no jurisdiction in this case. The litigation below involved in the appeal was between Keogh and the Orient Fire

Insurance Company as to the ownership of a fund in court for distribution, amounting to $1411.44. Each of the parties claimed the whole, but the court divided it between them, giving Keogh $729.16, and the Insurance Company $682.29. Keogh alone appeals. The Insurance Company is satisfied. It is clear, therefore, that the value of the matter in dispute here is only $682.29. To give us jurisdiction in appeals from the Supreme Court of the District of Columbia, the matter in dispute must exceed $1000. — (Rev. Stat. Sec. 705.) *Appeal dismissed.*

Mr. Enoch Totten for appellant.

Mr. S. R. Bond for appellees.

NORTHWESTERN LIFE INSURANCE CO. *v.* MARTIN. SAME *v.* WELLBORN.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

Nos. 1009 and 1008. Submitted December 17, 1877. — Decided January 7, 1878.

Thompson v. *Butler*, 95 U. S. 694, followed.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE announced the decision of the court.

Verdicts having been rendered in each of these cases against the plaintiff in error (the defendant below) for more than five thousand dollars, the plaintiffs respectively remitted all over that sum, and judgments were entered by the court, against the remonstrance of the defendant for five thousand dollars and no more. The cases having been brought here by the defendant below, the defendants in error (plaintiffs below) moved to dismiss because the amount in controversy is not sufficient to give us jurisdiction.

The question thus presented has just been decided in *Thompson* v. *Butler*, 95 U. S. 694, and the motions are granted for the reasons stated in the opinion read in that case.

Mr. Wm. P. Lynde and *Mr. L. D. McKisick* for plaintiff in error.

Mr. Josiah Patterson for defendants in error.

WILSON *v.* GOODRICH.

ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

No. 100. Argued December 20, 1878. — Decided December 23, 1878.

Claflin v. *Houseman*, 93 U. S. 130, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In *Claflin* v. *Houseman*, 93 U. S. 130, we held that an assignee in bankruptcy under the Bankrupt Act of 1867, as it stood before the revision, had authority to bring suit in the state courts, whenever those courts were invested with appropriate jurisdiction suited to the nature of the case. This suit was begun March 18, 1872, before the Revised Statutes were in force. Section 5597 provides that the repeal of the acts embraced in the revision should not affect any suit or proceeding had or commenced in any civil cause before the repeal. This leaves the present case, therefore, within the rule settled in *Claflin* v. *Houseman*, and renders it unnecessary to consider whether the jurisdiction in this class of cases was taken away by the revision as to suits afterwards commenced.

Judgment affirmed.

Mr. Edward Avery for plaintiff in error.

Mr. N. B. Bryant for defendant in error.

JAEGER *v.* MOORE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 232. Argued April 15, 16, 1879. — Decided May 5, 1879.

On the facts, the decree below is reversed in part, and in part affirmed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This decree is reversed as to the appellant Ulman, but in all other respects affirmed. The cause is remanded with instructions to dismiss the bill as to Ulman, and to enforce the deed of trust under which the appellee claims only against that part of the premises therein described which was not conveyed to him. The costs of this court are to be paid, one-half by the appellants Jaeger, and one-half by the appellee. No further opinion will be delivered.

Mr. Enoch Totten and *Mr. Linden Kent* for appellants.

Mr. Robert D. Morrison and *Mr. E. J. D. Cross* for appellee.

BURKE *v.* TREGRE.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 253. Submitted April 23, 1879. — Decided May 5, 1879.

Burke v. *Miltenberger*, 19 Wall. 579, followed.

The finding of the Supreme Court of the State as to the suspension of General Orders Nos. 60 and 70 is sustained by the evidence.

MR. CHIEF JUSTICE WAITE announced the judgment of the court.

The only Federal question presented for our consideration in this case not decided adversely to the present appellant in *Burke* v. *Miltenberger*, 19 Wall. 579, is that which relates to the effect of General Orders Nos. 60 and 70 upon the judicial sale under which the appellees claim. As to these orders it was found as a fact by the Supreme Court of the State that they were suspended by a special permit allowing the sale to be made, and we think this finding is sustained by the evidence. *Judgment affirmed.*

Mr. George S. Lacey for plaintiff in error.

Mr. Thomas L. Bayne for defendants in error.

LEAVENWORTH *v.* KINNEY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 744. Submitted January 10, 1879. — Decided March 3, 1879.

Commissioners v. *Sellew*, 99 U. S. 624, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case is substantially disposed of by that of *Board of County Commissioners of the County of Leavenworth* v. *Sellew*, just decided, 99 U. S. 624. A peremptory writ of mandamus has been ordered against the mayor and council of the city of Leavenworth in their corporate capacity, and the objection is that it should have been directed to the persons who were mayor and councilmen. The principle upon which the decision in the other case rests is conclusive of this, and the judgment of the Circuit Court is consequently affirmed, and the cause remanded with authority, if necessary, to so modify the order which has been entered, in respect to the time for the levy and collection of the tax, as to make the writ effective for the end to be accomplished. *Affirmed.*

Mr. M. H. Carpenter for plaintiff in error.

Mr. T. A. Hurd and *Mr. L. B. Wheat* for defendant in error.

CASE *v.* MARCHAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 804. Submitted January 13, 1879. — Decided January 27, 1879.

In a case of conflicting evidence on a question of fact, the court affirms the decree of the court below.

THE case is stated in the opinion.

MR. JUSTICE MILLER delivered the opinion of the court.

The Crescent City National Bank of New Orleans having failed to redeem some of its circulating notes, on a demand made March 17, 1873, was put into liquidation, and the present appellant appointed receiver by the comptroller of the currency. In the process of liquidation the comptroller issued a call of seventy per cent upon the amount of the capital stock held by each shareholder at the time of the failure, and the suit now before us on appeal is a bill in equity brought in the Circuit Court of the United States to discover who was liable under this order on fifty shares of the stock, standing in the name of Edward Lubie, and for a decree for the sum assessed.

The bill charged that Lubie was insolvent, and that the transfer of the shares on the books of the corporation, made by Keenan, one of the defendants, to Lubie, a day or two before the failure, was a device to evade the liability under the act of Congress, which it is the purpose of this bill to enforce, and that Alfred Marchand, the other defendant, was the real owner of the stock when the bank failed.

Lubie permitted a decree to be taken *pro confesso* against himself, and then became a witness against Marchand, and swears that he merely acted for Marchand and permitted the stock to be transferred to his name, because he was insolvent and could not be hurt, and that Marchand furnished the money paid to Keenan for the shares. Marchand denies all this under examination as a witness. There is much other conflicting and doubtful testimony. The case is one whose decision involves no question of law, and is otherwise unimportant, and we shall not criticise the evidence closely in this opinion. Lubie renders himself incredible by his own confessions and by his manner of testifying. The books of the company and the certificates of the shares delivered to him are record evidence against him, and while there are suspicious circumstances against Marchand, there is not enough to justify us in reversing the decree of the Circuit Court in his favor, and it is accordingly *Affirmed.*

Mr. J. D. Rouse and *Mr. William Grant* for appellant.

Mr. Joseph P. Hornor for appellees.

FAXON *v.* RUSSELL.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 846. Submitted January 13, 1879. — Decided January 20, 1879.

Arthur v. *Davies*, 96 U. S. 135, followed.
Arthur v. *Rheims*, 96 U. S. 143, applied.

MR. CHIEF JUSTICE WAITE announced the judgment of the court.

The judgment in this case is reversed upon the authority of *Arthur* v. *Davies*, 96 U. S. 135, and the cause remanded for further proceedings in accordance with this decision. Upon another trial, however, no allowances can be made for the reduction of ten per cent claimed under Sec. 2. of the act of June 6, 1872, (17 Stat. 232,) that point having been decided adversely to the plaintiff in error in *Arthur* v. *Rheims*, 96 U. S. 143. *Reversed.*

Mr. Charles Levi Woodbury for plaintiff in error.

Mr. Attorney General for defendant in error.

BETTS *v.* MUGRIDGE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 870. Submitted January 6, 1879. — Decided January 13, 1879.

A bill of exceptions cannot bring up the whole testimony for review whether the case has been tried by the court, or by a jury.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This cause was tried by the court below without the intervention of a jury. The facts were not agreed upon and there is no special finding. No exceptions were taken to the rulings of the court in the progress of the trial, but all the evidence has been embodied in a bill of exceptions, and the only error assigned is that the general finding of the court was in favor of the defendant below when it should have been for the plaintiff. We have often decided that a bill of exceptions cannot be used to bring up the whole testimony for review when the case has been tried by the court, any more than when there has been a trial by jury. *Norris* v. *Jackson*, 9 Wall. 125, 128; *Insurance Co.* v. *Sea*, 21 Wall. 158.

The judgment is affirmed.

Mr. Alfred B. Mason for plaintiff in error.

Mr. Charles M. Sturges for defendants in error.

INGERSOLL *v.* BOURNE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 949. Submitted November 25, 1878. — Decided December 2, 1878.

An appeal to this court will not lie from the judgment of a Circuit Court in a proceeding by a creditor to prove his demand against the estate of a bankrupt.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In *Wiswall* v. *Campbell*, 93 U. S. 347, we decided that an appeal to this court would not lie from the judgment of a Circuit Court in a proceeding by a creditor to prove his demand against the estate of a bankrupt. This is clearly such a case. Although on account of the peculiar character of the demand, the proceeding assumed to some extent the form of a suit in equity, it was instituted and carried on solely for the purpose of obtaining the allowance of the demand against the estate of the bankrupt.

The motion to dismiss is, therefore, granted upon the authority of the case cited. *Dismissed.*

Mr. G. Gordon Adam and *Mr. P. Phillips* for the motion.

Mr. W. B. Pittman and *Mr. A. B. Pittman* opposing.

DOLD *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 955. Submitted December 10, 1878. — Decided December 23, 1878.

The judgment of the Court of Claims is affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The facts found below present the following case:

In October, 1864, the Chief Commissary of Subsistence for the Military Department of New Mexico advertised that he would receive proposals at his office in Santa Fé, until January 2, 1865, for the delivery of 1,000,000 pounds of corn at Fort Sumner in three instalments, to wit: 500,000 pounds not later than May 31, 250,000 pounds not later than June 30, and 250,000 pounds not later than July 15. Dold, the appellant, then being at Las Vegas, N.M., was the successful bidder. He was notified January 15, and on the 30th C. W. Kitchen wrote the commissary from Las Vegas as follows: "My corn train is now close at hand. Would you have the kindness, if convenient, to authorize the A. C. S. at

Fort Sumner to receive corn on Andres Dold's contract? I will have about 85,000 pounds, I think, which I will get an order from Mr. Dold to turn in on his contract." On the 5th February, the commissary replied that he could not give an order to Dold to deliver or to the acting commissary to receive, until the contracts were signed and approved by the general commanding. On the same day the commissary forwarded the contract from his office to the commanding general for approval. On the next day, the 6th, he wrote Kitchen, who was one of the sureties for Dold on the contract, as follows:

"I am just in the receipt of the contract signed by Andres Dold and securities. Your proposition on behalf of Andres Dold to deliver 85,000 pounds which you now have on hand, on his (Dold's) contract, is accepted. You will proceed to deliver it without delay. The A. C. S. at Fort Sumner will be directed to receive it."

After this, February 18, Kitchen delivered to the officers of the commissary department at Fort Sumner, 28,747 pounds, and, February 24, 34,580 pounds, for which the chief commissary forwarded to the commanding general, March 24, accounts or vouchers in the name of Dold, for his approval. In a communication accompanying the accounts, he wrote as follows:

"This corn, delivered on the contract of Mr. Dold, was, as I was made to understand from a statement made to me by Mr. Dold, brought from the States by Mr. C. W. Kitchen, and was *en route* from the States before the contract was given. Mr. Kitchen himself told me when the bids were opened in my office, that his train from the States with corn was within striking distance, which would account for the early delivery."

The commanding general, however, disapproved the vouchers and directed that the delivery be not accepted under the contract. The corn was actually used in the public service, and in March, reported by the commissary who made the purchase, to the Commissary General of Subsistence of the Army, as purchased from Dold at the lowest market rates, not paid for, but certified accounts given. The price stated in the report was that fixed by Dold's contract.

No deliveries were made by Dold until July 16, when he delivered 407,561 pounds. On the 22d July, the commanding general from his headquarters at Santa Fé, through the chief commissary at the same post, communicated to Kitchen the fact that he withheld his approval of the accounts for his deliveries, and at the

same time proposed to pay him for the corn at the price it could have been purchased for at the time of delivery in the open market. On the 23d a voucher for this corn was made out in the name of Kitchen "as purchased in open market by order of the department commander," at 16.37 cents per pound, and Kitchen was paid at that rate, he receipting therefor "as in full of the above account." On the same day Dold addressed a letter to the chief commissary, in which he said he had just received information that the Kitchen delivery would not be accepted on his contract, and concluding as follows:

"Having made my arrangements for the delivery of the million pounds of corn, including the 63,327 pounds, if I am required now to deliver the million of pounds exclusive of the 63,327 pounds referred to, I most respectfully ask for an extension of time for the delivery of said amount until some time in the coming fall."

On the 29th July this request was acceded to and the time extended to November 15.

On the 25th and 31st July deliveries were made by Dold sufficient to complete the first instalment under the contract. The second instalment was filed between July 31 and August 28; and between August 21 and December 30, 240,545 pounds were turned in on account of the third instalment. There was no further delivery, and, for such as were made, Dold was paid in full according to the contract.

When Kitchen was paid upon the vouchers in his favor, July 23, it was understood that an appeal might be made to the War Department for the difference between the amount paid and the contract price. An appeal to that effect was prosecuted April 8, 1866, but without success.

This suit was commenced, February 16, 1871, to recover such difference, and judgment having been rendered in favor of the United States, Dold appealed.

A bare statement of the case seems to us sufficient to show that the judgment below was right. It is not pretended that Dold owned the corn delivered by Kitchen, or that he has been in any manner injured by the refusal of the commanding general to receive it under the contract. If this were a suit against him to recover damages for not delivering, and he were defending because of the tender by Kitchen, the question would be whether that was such an offer to perform on his part as would excuse him from liability for a failure to deliver to that extent.

But instead of being such a suit it is one to recover for a deliv-

ery actually made under the contract. To this the government answers:

"The corn for which you now claim was not accepted as a delivery under the contract. You were so informed at the time and, acquiescing in the decision, asked further time to complete your performance. This was granted. Your other deliveries have been made and accepted and you have been paid in full. Kitchen, who actually owned the corn not accepted, has been paid for it at the market price upon a voucher in his name. He cannot claim under the contract, for he was no party to it, and you cannot complain because, acquiescing in the refusal to accept his corn, you have performed your contract in another way and been paid in full."

It seems to us this answer is conclusive. We need not consider any question arising upon the exclusion of Kitchen as a witness, which the appellant has attempted to put into the record, for had his testimony all been admitted the result must have been the same. Dold did not stand on his rights under the tender of Kitchen's delivery and refuse to yield to the decisions made against him, but went on and fulfilled his contract in accordance with the claim of the government as to his obligation, and now, apparently for Kitchen's benefit alone, seeks to compel the government to pay for Kitchen's corn at the contract price instead of the market rates. *Judgment affirmed.*

Mr. Harvey Spalding for appellant.

Mr. Attorney General and *Mr. Solicitor General* for appellee.

WILLIAMS *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 1058. Submitted January 24, 1879. — Decided February 3, 1879.

The acceptance by a supernumerary officer in the Continental line of an appointment in the regiment of guards authorized by the State of Virginia took him out of the line and put him into the new organization.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

From the finding of facts sent up with this appeal we are clearly of the opinion that Dr. Taylor did not "continue in service until the end of the war," within the meaning of the Resolutions of Congress of October 21, 1780, and of March 22, 1783, under which the claim in this case is made. When he accepted his appointment in the regiment of guards, January 9, 1779, he ceased to be a supernumerary surgeon's mate and became an active officer in the

new regiment. Consequently when that regiment was discharged because its term of enlistment had expired, he was out of service. When the new regiment was raised the Governor and Council of Virginia were authorized by Congress to appoint its officers out of those in the Virginia line who were then supernumerary. Although it is said in one of the additional findings, that Dr. Taylor was "assigned to active duty," this is to be construed in connection with the resolution to which reference is made, and that being done it is apparent there was no intention by that language to modify the previous finding that "he was appointed surgeon's mate of the regiment of guards authorized by the resolution of January 9, 1779, of the Continental Congress." By the resolution Congress permitted the supernumerary officers in the line to accept appointments in the new regiment. Such an acceptance took them out of their former position in the line and put them into the new organization. *The judgment of the Court of Claims is affirmed.*

Mr. P. E. Dye for appellant.

Mr. Attorney General, *Mr. Solicitor General* and *Mr. Assistant Attorney General Smith* for appellee.

NORTH *v.* McDONALD.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF WYOMING.

No. 41. Submitted November 4, 1879. — Decided November 10, 1879.

On the case made by the pleadings the court will not disturb the judgment below.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The plaintiffs below evidently intended to bring this action under sec. 5129 of the Revised Statutes, but the averments in their petition are only sufficient to make a case under sec. 5046. While the court would certainly have been justified in leaving the question of fraud to the jury upon the evidence as it stood, we think, if a judgment had been rendered against the defendants, it might with propriety have been set aside as being contrary to what had been proven. For this reason, although it might have been more in accordance with correct practice not to take the case from the jury, we will not disturb the judgment. No request was made for leave to amend the petition, and we must consider the case here as made by the pleadings, and not as the parties may have intended to make it. *The judgment is affirmed.*

Mr. C. W. Bramel and *Mr. W. W. Corlett* for plaintiffs in error.

Mr. Edward P. Johnson for defendants in error.

LAMMERS *v.* NISSEN.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 72. Argued and submitted November 17, 1879. — Decided November 24, 1879.

When the District Court in a State has given a judgment which involves the finding of a fact in dispute, and that judgment is affirmed by the Supreme Court of the State, this court will not disturb the judgment of the latter unless the error be clear.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The only question in this case is whether as a matter of fact, when Lammers, the plaintiff in error, purchased from the United States, lot 1, sec. 12, T. 33, R. 1, Dakota City land district, there was in front and outside of the meandered line of the lot any land that could be cultivated, or that bore trees of value, or grass sufficient for grazing purposes. There is no dispute between the parties as to the law. The District Court of Cedar County found there was such land and this finding has been affirmed by the Supreme Court of Nebraska on appeal. Under such circumstances we ought not to disturb the judgment of the state court unless the error is clear. No less stringent rule should be applied in cases of this kind than that which formerly governed in admiralty appeals, when two courts had found in the same way, on a question of fact.

After a careful examination of the evidence, we are satisfied with the result reached by the court below, and the judgment is, consequently, *Affirmed.*

Mr. M. H. Carpenter, *Mr. S. W. Packard*, *Mr. James Coleman*, and *Mr. G. C. Moody* for plaintiff in error.

Mr. B. F. Grafton and *Mr. H. E. Paine* for defendants in error.

WOOLFOLK *v.* NISBET.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 73. Argued November 17-18, 1879. — Decided December 1, 1879.

On the facts it is held that the conveyance which is the subject of dispute in this suit was fraudulent under the bankrupt laws.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

After full consideration of all the evidence in this case we are satisfied —

1. That James H. Woolfolk was insolvent when he made the conveyance to Sowell C. Woolfolk, which is complained of;

2. That Sowell C. Woolfolk had reasonable cause to believe such insolvency when he received the conveyance; and

3. That the conveyance was made with a view to defeat the object and operation of the bankrupt law.

There is no dispute about the law applicable to this state of facts, and as we deem it unnecessary to discuss the evidence in detail, no further opinion will be delivered.

The decree of the Circuit Court is *Affirmed.*

Mr. Clifford Anderson for appellants.

Mr. R. F. Lyon for appellee.

FOLLANSBEE *v.* BALLARD PAVING CO.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 102. Argued December 10 and 11, 1879. — Decided December 15, 1879.

The decree from which this appeal was taken was not a final decree.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The motion to dismiss this appeal is granted. The decree appealed from is not a final decree. The amount due from the appellant has not been ascertained. *Dismissed.*

Mr. William A. Cook and *Mr. J. H. Bradley* for appellant.

Mr. A. S. Worthington and *Mr. E. L. Stanton* for appellee.

PONDER *v.* DELAUNEY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 204. Argued March 16, 1880. — Decided March 29, 1880.

This case presents only a question of fact, which was properly decided in the court below.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case presents only a question of fact which we are satisfied was decided right in the court below. There is no sufficient evidence to set aside the settlement between the parties as expressed in the receipt in full executed when the sum agreed on was paid. As that is the only matter in dispute the decree is *Affirmed.*

Mr. R. J. Moses for appellant.

Mr. Charles N. West and *Mr. William Reynolds* for appellees.

FONTAINE *v.* McNAB.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

No. 205. Argued March 17, 1880. — Decided March 29, 1880.

The court finds the disputed facts in favor of the appellee, and enters a decree accordingly.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

From the evidence in this case we find:

1. That the trust deed from Flewellyn to Shorter was duly executed and delivered. Under the ruling of the Supreme Court of Georgia in *Dinkins* v. *Moore*, 17 Ga. 62, there was sufficient proof of delivery to authorize the record.

2. That the deed, when executed and delivered, had upon it internal revenue stamps to the amount of thirty dollars, which was all that was required.

3. That the deed, including the stamp, was properly recorded, March 15, 1867. And —

4. That at the time of the advertisement for sale under the trust deed there was no newspaper published in Quitman County, and that the Cuthbert Appeal had a general circulation in that county.

There is no dispute but that upon this state of facts the decree below must be affirmed, and it is consequently so ordered.

Affirmed.

Mr. R. J. Moses for appellant.

Mr. A. R. Lawton for appellee.

UNITED STATES *v.* WILLIAMS.

APPEAL FROM THE COURT OF CLAIMS.

No. 216. Argued December 23, 1879. — Decided January 5, 1880.

The judgment of the court below is affirmed on the case presented to this court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We are satisfied with the judgment below. The points raised and considered below have not been presented here, and that raised and argued here does not seem to have been presented there. We think upon the facts found it sufficiently appears that the terms and conditions of the promised reward were complied with, and

that the claimant was entitled to recover what was offered for the services he rendered. *Judgment affirmed.*

Mr. Attorney General for appellant.

Mr. O. S. Lovell and *Mr. Lewis Abraham* for appellee.

GRAND TRUNK RAILWAY COMPANY *v.* WALKER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MAINE.

No. 219. Submitted March 23, 1880. — Decided April 5, 1880.

A railroad company which runs its line by telegraph, is bound to have a suitable telegraph line, with a proper number of operators, and in case of an accident it is for the jury to decide whether their duty in this respect has been performed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Although much and probably all the testimony in this case is embodied in the bill of exceptions, the only exception taken below was to the following instruction to the jury:

"The defendants, if they undertook to manage and conduct the business of running their trains by telegraph, were bound to have a proper and fit telegraph line for this purpose, with a reasonable number of telegraph stations and operators to properly conduct and control the movements of the trains. And it is for the jury to decide whether this duty was performed by the defendants or whether they were guilty of negligence and want of ordinary care in this respect by not having the requisite number of telegraph stations and operators for conducting the business of the road. If they were guilty of such negligence and want of care and thus occasioned the injury which otherwise would not have occurred, then the jury would be authorized to find a verdict for plaintiff."

We see no error in this instruction as an abstract principle of law, and no complaint is made of it here on that account. The whole effort on the part of the plaintiff in error has been to show that upon the evidence the verdict ought to have been in its favor. That question we cannot consider. The instruction was right, and certainly not so far inapplicable to the allegation in the writ as to justify a reversal of the judgment on that account.

The judgment is affirmed.

Mr. John Rand for plaintiff in error.

Mr. A. A. Strout for defendant in error.

BURR *v.* MYERS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 223. Argued March 24, 1880.—Decided April 5, 1880.

The court has no jurisdiction in this case.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The matters in dispute on this appeal are those presented by the exceptions to the master's report. These are:

First exception			$1500.00
Second exception.—First item		$ 13.25	
	Second item	125.46	
	Third item	17.50	
	Fourth item	117.55	
			273.76
Total as of February 25, 1873			$1773.76

The addition of interest to this amount from the date at which the master made up the account until the decree below will not make the value of the amount in dispute equal to that necessary to give us jurisdiction. *Appeal dismissed.*

Mr. C. H. Armes for appellant.

Mr. John F. Hanna and *Mr. James M. Johnston* for appellee.

DALLAS COUNTY *v.* HUIDEKOPER.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

No. 225. Argued March 25, 1880.—Decided April 5, 1880.

County of Macon v. *Shores*, 97 U. S. 272, and *Smith* v. *Clark County*, 54 Missouri, 59, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We think the only question in this case was settled by the Supreme Court of Missouri in *Smith* v. *County of Clark*, 54 Mo. 59, where it was held on a petition for rehearing, after the case had been once decided, p. 81, that "whether the corporation had a legal existence or not when the subscription was made, is a question that cannot be raised in a collateral proceeding." In this case, as in that, the corporation "did exist as a matter of fact, and was in the exercise of all its chartered franchises when the

subscription was made and the bonds issued." That case, like this, was a suit upon coupons for interest attached to bonds issued by the county in payment for its subscription to the capital stock of a railroad corporation, and the point made was, "that the charter of the company had ceased before the company was organized." That, the court said, was "a question between the State and the company," and gave judgment against the county. We had occasion to consider the same question in *County of Macon* v. *Shores*, 97 U. S. 272, 276, and held the same way.

Judgment affirmed.

Mr. S. H. Boyd, Mr. A. D. Matthews and *Mr. B. L. Brush* for plaintiff in error.

Mr. Joseph Shippen for defendant in error.

DALLAS COUNTY *v.* HUIDEKOPER.

SAME *v.* DAVOL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

Nos. 224 and 226. Argued March 25, 1880.— Decided April 5, 1880.

Dallas County v. *Huidekoper*, *ante*, 654, followed.

Mr. Chief Justice Waite delivered the opinion of the court.

These are suits in equity to enjoin the collection of judgments against Dallas County on coupons for interest attached to the same class of bonds just considered in *Dallas County* v. *Huidekoper*, No. 225, *ante*, 654, and relief is asked on the ground that the charter of the railroad company had expired before any organization was effected under it, and that this fact was not known to the county until after the judgment was rendered. After what has been said in the other case, it is clear that the bills were properly dismissed without considering the power of a court of equity to sustain such a suit, and the decree in each of the cases is consequently *Affirmed.*

Mr. S. H. Boyd, Mr. A. D. Matthews and *Mr. B. L. Brush* for appellant.

Mr. Joseph Shippen for appellees.

BANK OF THE REPUBLIC *v.* MILLARD.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 240. Submitted October 27, 1879.—Decided November 3, 1879.

Railroad Co. v. *Grant*, 98 U. S. 398, followed.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The value of the matter in dispute in this case is less than twenty-five hundred dollars, and, therefore, under our ruling in *Railroad Co.* v. *Grant*, 98 U. S. 398, the judgment is not now reviewable here. The special allowance of a writ of error to reverse a former judgment in the same cause, under which a reversal was had, cannot be made applicable to this writ, because the case as now presented is entirely different from what it was before. In fact, after the case went back, it was made to conform to what, as was suggested in the opinion reported in 10 Wall. 157, might perhaps entitle the plaintiff to recover.

The motion to dismiss is granted, each party to pay his own costs. *Dismissed.*

Mr. J. H. Bradley for plaintiff in error.

Mr. R. D. Mussey for defendant in error.

GAGE *v.* CARRAHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 243. Submitted April 6, 1880.—Decided April 12, 1880.

Removal Cases, 100 U. S. 457, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The order remanding this cause to the state court is affirmed on the authority of *Meyer* v. *Construction Co.*, 100 U. S. 457. Carraher occupies one side of the controversy about which the suit is brought, that is to say, the title to the property in question, and Portia Gage, Henry H. Gage and John Forsythe the other. Henry H. Gage and Forsythe are citizens of the same State with Carraher. There is no controversy in the suit which is wholly between citizens of different States and which can be fully determined as between them. *Affirmed.*

Mr. Henry D. Beam for appellant.

Mr. James E. Munroe and *Mr. W. C. Goudy* for appellee.

THE LOUISVILLE, GIBSON, Claimant, *v.* HALLIDAY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

No. 278. Argued April 23, 1880.—Decided April 26, 1880.

The findings of fact by the Circuit Court in an admiralty suit are conclusive upon this court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

It is conceded that upon the facts found by the Circuit Court the decree appealed from was right. That finding is conclusive upon us. *The Abbotsford*, 98 U. S. 440. No exceptions were taken to the rulings of the court in the progress of the trial.

An appeal in admiralty from the District Court to the Circuit Court vacates the decree appealed from. The case is heard *de novo* in the Circuit Court, without any regard to what was done below. An entire new decree is entered, which the Circuit Court carries into execution. The cause is not remanded to the District Court. After the suit once gets into the Circuit Court it is proceeded with substantially in the same way as it would have been if originally begun in that court. *The Lucille*, 19 Wall. 74; *Montgomery* v. *Anderson*, 21 How. 388; *Yeaton* v. *United States*, 5 Cranch, 283. *Affirmed.*

Mr. T. D. Lincoln for appellants.

Mr. William B. Gilbert for appellee.

JOUAN *v.* DIVOLL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 485. Submitted December 22, 1879.—Decided January 5, 1880.

This decree is affirmed on the facts on the various points stated in the opinion of the court.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We think the evidence shows that Divoll was induced to make his purchase from Cooke on the representation of Jouan that Cooke was the owner of one-half the claim. For this reason Jouan is now estopped from denying Cooke's title. As Jouan and Cooke have settled all their disputes, and Jouan has been released by Cooke from all further liability to him under the original assignment, Cooke's representatives are not necessary parties to this suit. This objection does not seem to have been made below.

By the terms of the assignment to Cooke he was bound to pay all costs and expenses incurred in prosecuting the claim. It was right, therefore, to deduct from Divoll's share of the money recovered a corresponding share of the expenses.

The decree is *Affirmed.*

Mr. J. D. McPherson for appellant.

Mr. J. G. Kimball for appellee.

WOODFOLK *v.* SEDDON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

No. 943. Submitted January 21, 1880. — Decided March 2, 1880.

The court, being satisfied that the various matters detailed in the opinion were part and parcel of a scheme devised to hinder and delay creditors in the collection of their debts, affirms the decree of the court below in this case.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

After a careful consideration of this case, we are entirely satisfied that the consideration of the note executed by William W. Woodfolk to his son, William Woodfolk, on which alone the title of the son to the property in controversy depends, was fictitious, and that the confession of judgment by the father in favor of the son, and the purchase of the property in controversy by the son under execution, were but parts of a scheme devised by the father and son through which it was hoped something might be saved from the wreck of the father's fortune at the expense of his *bona fide* creditors. There is no dispute about the law applicable to these facts, and as it will serve no useful purpose to discuss the evidence in detail, a further opinion on this point will not be delivered.

The purchase of the property at tax sale by the son was, as we think, under the circumstances, nothing more in legal effect than payment of the taxes, so far as the rights of this appellant are concerned. We cannot divest ourselves of the conviction that it was part and parcel of the scheme devised to hinder and delay creditors in the collection of their debts. *Decree affirmed.*

Mr. T. D. W. Yonley for appellants.

Mr. A. H. Garland for appellee.

GURNEE *v.* BLAIR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 988. Submitted December 1, 1879. — Decided December 8, 1879.

Railroad Company v. *Blair*, 100 U. S. 661, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case is not materially different from No. 987, *Railroad Co.* v. *Blair*, 100 U. S. 661, and

An order may be entered similar to the one in that case.

Mr. S. Corning Judd and *Mr. W. F. Whitehouse* for appellants.

Mr. E. C. Larned and *Mr. W. C. Larned* for appellees.

SEA *v.* CONNECTICUT MUTUAL LIFE INSURANCE CO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 1066. Submitted April 29, 1880. — Decided May 10, 1880.

Carroll v. *Dorsey*, 20 How. 204, followed.

MOTION TO DISMISS.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This motion is granted on the authority of *Carroll* v. *Dorsey*, 20 How. 204, because of the omission to state with certainty the return day of the writ of error. The defect is one that is amendable under section 1005 Rev. Stat., but as no application is made by the plaintiff in error for leave to amend, and no citation has ever been served, we are not inclined, on our motion, to make any order in that behalf. *Dismissed.*

Mr. H. O. McDaid for plaintiff in error.

Mr. E. S. Isham and *Mr. Robert T. Lincoln* for defendant in error.

COWDREY *v.* VANDENBURGH.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 1076. Submitted January 14, 1880. — Decided March 8, 1880.

Cowdrey v. *Vandenburgh*, 101 U. S. 572, followed.

MR. JUSTICE FIELD delivered the opinion of the court.

The decree in this case is affirmed for the reasons given in the above opinion (*Cowdrey* v. *Vandenburgh*, 101 U. S. 572). *Affirmed.*

Mr. Joseph H. Bradley for appellant.

Mr. James G. Payne for appellees.

GROAT *v.* O'HARE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 35. Argued October 21, 1880. — Decided November 8, 1880.

This case is reversed because this court is not satisfied that the court below reached a proper conclusion on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We are not satisfied from the evidence that the court below was right in directing the auditor, in stating the account of the partnership, to credit O'Hare with $2926.20, for items set out in Schedule D, annexed to the first report. It is clear to us that the items, amounting in the aggregate to $1650, for hire of horse and buggy, are not proven, but it is impossible, from the case as it now stands, to determine what amount, if any, should be allowed for these and the other claims in that schedule.

We think, also, that the parties should be permitted to produce further evidence in respect to the certificates amounting to $5600, which O'Hare, on his cross-examination before the auditor under the reference from the general term, admits he received from the Evans Concrete Company. It is clear that he should be now charged with this amount, unless it has already been included in the accounts as stated by the auditor. It is impossible to determine from the case as it is now presented whether he has been so charged or not.

We find no other errors in the action of the court below. The decree is reversed and the cause remanded with instructions to permit the parties, if they desire, to take further testimony in respect to the items of charge by O'Hare, as stated in Schedule D, and the certificates received by O'Hare from the Evans Concrete Company, and for such further proceedings, not inconsistent with this opinion, as shall seem to be necessary.

Reversed.

Mr. T. T. Crittenden for appellants.

Mr. R. T. Merrick and *Mr. M. F. Morris* for appellee.

BANK OF MONTREAL *v.* WHITE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 61. Submitted November 8, 1880. — Decided November 22, 1880.

The refusal of a charge asked for which is wholly immaterial is no ground for reversal.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

There can be no pretence in this case that the note in suit was ever actually delivered to the bank as collateral security for past or future indebtedness. In the letter transmitting it, the bank manager was asked to discount it and place the proceeds to the credit of the manufacturing company. In that event the "overdraft kindly allowed on Friday" was to be charged against the credit, but it is nowhere, even in the remotest degree, intimated that if the discount was declined the note might be kept as collateral. The charge asked and refused was, therefore, wholly immaterial, and the judgment cannot be reversed because it was not given. No complaint can be made of the charge as given if this refusal was right. All the errors assigned hinge on this one proposition. *Judgment affirmed.*

Mr. Wirt Dexter for plaintiff in error.

Mr. Allan C. Story and *Mr. Robert Hervey* for defendant in error.

WHITE *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 82. Argued November 29, 1880. — Decided December 13, 1880.

When a charter party provides that the hirer of the vessel need not make good any loss arising from ordinary wear and tear, a finding by the court that repairs sued for resulted from ordinary wear and tear is a bar to recovery.

Money paid to a person on a vessel chartered to the government by the owner of the vessel cannot be recovered from the United States unless authorized by them.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The Court of Claims has found expressly that the condition of the vessel (when she was discharged from the charter, which made the repairs sued for necessary) resulted from the ordinary wear and tear of the service in which she was engaged under the charter party. This is conclusive against any recovery for these repairs. It was expressly provided in the charter party, that the government need not make good any loss arising from ordinary wear and tear. Although, if this one fact had been omitted from the findings, a different judgment might with more propriety have been contended for, with it found, the conclusion reached by the court below was unavoidable.

This finding is not inconsistent with anything else that appears

in the case. The vessel was sent up the Ashepoo River as a transport. She did land, under the orders of the general in command of the expedition, at a place selected by him against the objection of the master put in charge of her navigation by her owner, and she did ground and was badly strained while at the landing, but it is nowhere found that she would have grounded, or that she would have been unusually strained, if the master had obeyed the further order of the general and moved her away from the shore into the stream after the troops and horses were off. Certainly the government cannot be held responsible for losses arising from a disobedience by the master of the orders of a military officer in command of any expedition on which she was properly sent under her charter. She was chartered for war service and bound accordingly. If loss happened from a "war risk," that is to say, if the war was the proximate cause of the loss, the damage was to be made good by the government; but if it was caused by the refusal of the master to obey those in command of a military expedition to which the vessel was attached, the neglect of the master and not the war would be the proximate cause. This neglect of the master was a marine risk which the owner assumed. Damages arising from such a risk the owner was bound to repair under his covenant to keep and maintain the vessel tight, staunch and strong during the continuance of the charter. The findings, taken as a whole, are to be construed as meaning that the repairs put on the vessel after she was discharged from service were not rendered necessary by any of the risks assumed by the government under the charter.

What has thus been said is applicable also to the claim for deductions from the pay of the vessel during the month of August, 1864, for lost time and repairs after her return from the Ashepoo River. The charter expressly provided that time lost in consequence of any breach of the covenants by the owner should not be paid for, and the court below in effect found that the damages repaired were caused by the neglect of the master to move the vessel out into the stream after the landing had been completed. No complaint is made in the petition of the amount of the charge. The right to recover is put entirely on the ground that the damages were such as the government was bound to repair, and, therefore, that the repairs were not chargeable against the owner. In the petition the quartermaster's and commissary's stores are included as part of the costs of the repairs, which was, no doubt, in accordance with the facts.

The money paid to Cannon for his services on board the vessel cannot be recovered from the United States. The claim was made by Cannon against the owner and not by the United States. It was voluntarily paid, with a full knowledge of all the facts. It may be that the payment was made to avoid a controversy with the United States, but that furnishes no ground of recovery. *Silliman* v. *United States*, 101 U. S. 465.

The judgment is affirmed.

Mr. John J. Weed and *Mr. M. H. Carpenter* for appellant.

Mr. Attorney General and *Mr. Assistant Attorney General Smith* for appellee.

McLAUGHLIN *v.* FOWLER.

SAME *v.* THORPE.

ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

Nos. 94 and 95. Argued December 2, 1880.—Decided December 13, 1880.

In cases brought here from state courts this court can only look beyond the Federal question when that has been decided erroneously.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The only Federal question in these cases is whether the patents to the Western Railroad Company for lands within the limits of the Moquelomnes grant are valid. If that question was not decided by the court below we have no jurisdiction; if it was, the judgment was right, because in accordance with *Newhall* v. *Sanger*, 92 U. S. 761, brought here in 1875 for the determination of the same identical question. Such being the case the judgment must be affirmed. We can only look beyond the Federal question when that has been decided erroneously, and then only to see whether there are any other matters or issues adjudged by the state court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. *Murdock* v. *Memphis*, 20 Wall. 591.

The judgment in each of these cases is affirmed on the authority of Newhall v. *Sanger.*

Mr. Henry Wise Garnett for plaintiff in error.

No appearance for defendants in error.

RICHMOND MINING CO. *v.* EUREKA MINING CO.
SAME *v.* SAME.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

Nos. 116 and 117. Argued March 25 and 30, 1881. — Decided April 25, 1881.

Richmond Mining Co. v. *Eureka Mining Co.*, 103 U. S. 839, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

These are suits in equity and are dependent on the suit in ejectment between the same parties which has just been decided.

The decrees of the Circuit Court are affirmed for the reasons stated in the opinion filed in that case. *Affirmed.*

Mr. Thomas Wren, *Mr. P. Phillips* and *Mr. S. M. Wilson* for appellant.

Mr. T. T. Crittenden and *Mr. Harry I. Thornton* for appellee.

WHITNEY *v.* FIRST NAT. BANK OF BRATTLEBORO.

ERROR TO THE SUPREME COURT OF THE STATE OF VERMONT.

No. 125. Argued December 8, 1880. — Decided December 20, 1880.

National Bank v. *Graham*, 100 U. S. 699, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case is clearly settled by that of *National Bank* v. *Graham*, 100 U. S. 699. The identical question there decided is presented by the record, and we have no doubt it was the only question considered by the Supreme Court of the State. We certainly cannot say, from anything that appears in the bill of exceptions, that there might not have been enough evidence of negligence on the trial in the lower court to make it necessary to send the case to the jury. There is nothing whatever in the record to indicate that the positive instruction to the jury to bring in a verdict for the defendant below was based on anything else than a ruling that, as a matter of law, a national bank was not liable for the loss of special deposits.

The judgment is reversed and the cause remanded with instructions to reverse the judgment of the county court, and award a *venire de novo*. *Reversed.*

Mr. Charles N. Davenport for plaintiff in error.

Mr. E. J. Phelps for defendant in error.

BENTON COUNTY *v.* ROLLENS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

No. 147. Argued December 15, 1880. — Decided December 20, 1880.

Scotland County v. *Thomas*, 94 U. S. 682, and *Schuyler County* v. *Thomas*, 98 U. S. 169, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This judgment is affirmed on the authority of *Scotland County* v. *Thomas*, 94 U. S. 682, and *Schuyler County* v. *Thomas*, 98 U. S. 169. Under the rulings in those cases the amendment to the charter of the Osage Valley and Southern Kansas Railroad Company adopted in 1871, and changing somewhat the route of the road, did not extinguish the power granted to counties by the original charter to subscribe to the stock of the company. The amendment was not a new charter, but an alteration of the old one in a way which left the power to subscribe in full force. *Affirmed.*

Mr. T. T. Crittenden for plaintiff in error.

Mr. John D. Stevenson and *Mr. J. B. Henderson* for defendants in error.

SEWARD *v.* COMEAU.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 240. Submitted March 3, 1881. — Decided March 21, 1881.

Affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We think the court below was right in dissolving the injunction which had been obtained in the state court and dismissing the bill. There cannot be a doubt from the evidence that the Magenta plantation contains in fact the full quantity of land which was guaranteed, and that the deficiency, if there is any, arises from a mistake in the description of one of the parcels intended to be conveyed. The grantee was put in actual possession of the whole plantation, and he, and those claiming under him, have never been disturbed since. No person has ever set up any adverse claim whatever, either to the possession or the title. The complainants have shown no reason to fear that they will ever be disquieted, and certainly they have not proven that they were in danger of eviction. They have never asked a correction of the mistake in

the description, if any there is, and it is by no means certain that the language of the whole deed does not really embrace what it is claimed has been omitted.

What we have thus said applies to all the alleged defects in the title. No adverse claim has been set up by any one, and, so far as anything appears, there is no danger whatever that the complainants will be disturbed in their possession, either because patents have not been issued, or because Mrs. Delhommer was not authorized by the court to obtain a judicial separation of property.

The fact that the sheriff advertised to sell in parcels, presents no ground for an injunction. As the injunction granted by the state court has been dissolved, and the bill dismissed, we need not inquire whether the proceeding by executory process in the state court was removed to the Circuit Court or not. The parties may now proceed with the execution of that process in such manner as they shall be advised is proper. The appellants cannot object to such removal as was actually effected to the Circuit Court, because it was brought about on their application. *Affirmed.*

Mr. H. N. Ogden for appellants.

Mr. E. T. Merrick and *Mr. G. W. Race* for appellees.

WIGHT *v.* CONDICT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 280. Argued April 22, 1881. — Decided May 2, 1881.

Members of a limited partnership purchased and paid for the interest of one of the members. Subsequently the remaining members became bankrupt. *Held*, that the assignee in bankruptcy had no claim against the outgoing partner as a debtor by reason of this transaction.

MR. CHIEF JUSTICE WAITE announced the judgment of the court.

The decree in this case is affirmed. There can be no pretence that Condict owed the bankrupts anything. They bought his interest in the limited partnership of which he was once a member and paid him for it. If the creditors of that partnership have any just claims against him on account of what has been done, they must proceed as they may be advised to enforce their rights, but the assignee of the bankrupts is in no respect their representative for that purpose. He can reduce to his possession whatever is owing to the bankrupts and also what they have disposed of in fraud of the bankrupt law; but Condict was not their debtor when

the bankruptcy occurred, and there is no allegation that what they did in respect to his interest in the limited partnership was forbidden by the bankrupt law.

Mr. John E. Risley and *Mr. Daniel S. Riddle* for appellant.

Mr. William P. Chambers for appellee.

FRANCE *v.* MISSOURI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

No. 915. Submitted October 18, 1880. — Decided October 25, 1880.

No Federal question is raised in this case.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This was a proceeding by *quo warranto* to exclude the plaintiffs in error, who were the defendants below, from the further use of the franchises of a lottery, known as the Missouri State Lottery, on the ground that the event had happened which fixed the period for the termination of the grant under which they were acting. This was in legal effect all that the petition contained. The defendants in their answer conceded that their grant was to terminate on the happening of a certain event, but insisted that this event had not yet taken place, because they had for a time been prevented from carrying on their business by judicial proceedings against them in the courts of the State. This presented the only question in the case. It was agreed by both parties that the grant or contract under which the defendants claimed was valid and binding on the State and that the grant was not limited to an arbitrary period, but to the happening of a particular event. All these questions had long before been decided by the highest court of the State, and there was no attempt to overturn or modify the decisions. No claim was made under any of the statutes of the State passed for the suppression of lotteries, and the single question put to the Supreme Court of the State for determination was, whether the event had in fact happened which all agreed was to terminate the franchise. The court decided that it had, and gave judgment accordingly. No effect whatever was given to any law of the State impairing the obligations of the grant. Nothing was done but to decide that upon the evidence the grant had expired by its own limitation. The contracts as presented and agreed on by both parties were construed and full effect given to all the obligations

they were found to contain. No Federal question was raised or decided. *The motion to dismiss is, therefore, granted.*

Mr. C. H. Krum and *Mr. Wm. O. Bateman* for plaintiffs in error.

Mr. Leverett Bell for defendant in error.

GREEN *v.* FISK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

No. 965. Submitted March 21, 1881. — Decided April 4, 1881.

Green v. *Fisk*, 103 U. S. 518, followed.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This, like *Green* v. *Fisk*, just decided, is a motion to dismiss an appeal in a partition suit, because the decree appealed from is not final, and also, because the value of the matter in dispute does not exceed five thousand dollars. The appellees, complainants below, claim to be the owners each of one-eighth of the property to be divided, which it is admitted is worth only ten thousand dollars. In the petition it is alleged that the value of the annual income was five thousand dollars, and an account of the revenue is asked as well as a partition. This suit, like the other, was begun in a state court, and removed by Green to the Circuit Court, where, by an express order, it was put on the equity docket and a change in the pleadings directed so as to make it conform to rules governing equity cases.

The decree appealed from simply adjudges that the appellees are the owners each of one-eighth the property, and refers the matter "to J. W. Gurley, Esq., master, to proceed to a partition according to law, under the directions of the court." As was decided in the other case, this is not a final decree, but if it was we would be without jurisdiction, because the property only has been adjudged to the appellees, and the value of that is less than the amount required to bring a case here. There has been no order even for an accounting, and as yet we are not advised there ever will be one, much less that if it should be made a balance would be found due from the appellant sufficient to make the value of the matter in dispute on an appeal by him such as our jurisdiction requires. As the appellant to sustain his appeal must show affirmatively that more in pecuniary value than our jurisdictional

requirement has been adjudged against him, he has failed to make a case for us to consider. *The motion to dismiss is granted.*

Mr. Thomas J. Durant and *Mr. Charles W. Hornor* for the motion.

Mr. Thomas J. Semmes opposing.

HEARST *v.* HALLIGAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 6. Submitted November 14, 1881. — Decided December 5, 1881.

Affirmed on the facts.

MR. JUSTICE HARLAN delivered the opinion of the court.

A very thorough examination of the record and the printed arguments in this case fails to disclose any difficult question of fact or of law. We are entirely satisfied with the conclusions reached by the Circuit Judge, and with the reasons given in support thereof. All the relief to which the appellant was entitled, under the evidence, was accorded to him by the final decree. We are not sure but that the court might have gone farther, and adjudged that, as to a material portion of appellant's cause of action, the statute of limitations of Missouri constituted a complete defence.

No further opinion will be delivered. *The decree is affirmed.*

Mr. Jacob Klein, Mr. Samuel Knox and *Mr. W. M. Stewart* for appellant.

Mr. T. W. B. Crews for appellees.

PRICE *v.* KELLY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 13. Submitted October 12, 1881. — Decided October 25, 1881.

Affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case is very imperfectly presented. No one appears for the appellee, and the record is incomplete. The bill charges the appellee with an infringement of certain letters patent issued to and owned by the appellant. The answer attacks the validity of the patent, and denies the infringement. The court below, with-

out passing on the other questions, held there was no infringement. The appellee evidently claimed under a patent to himself, which, with the accompanying drawings and certain models, was in evidence. This evidence is not before us. Neither the patent nor the drawings are in the record, and the models have not been brought up. Nor have we been able to find anywhere in the record a satisfactory description of the structure which the appellee uses. The burden of proving the infringement is on the appellant. The necessary proof in this respect has not been made, and the decree below is consequently *Affirmed.*

Mr. J. J. Noah and *Mr. C. K. Davis* for appellant.

No appearance for appellee.

ROBERTS *v.* BOLLES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 48. Submitted October 20, 1881. — Decided October 25, 1881.

Roberts v. *Bolles*, 101 U. S. 119, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The judgment in this case is affirmed on the authority of *Roberts* v. *Bolles*, 101 U. S. 119, which we see no reason for reconsidering. *Affirmed.*

Mr. Andrew J. Bell for plaintiff in error.

Mr. George O. Ide for defendants in error.

GLOVER *v.* LOVE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 62. Submitted October 28, 1881. — Decided November 7, 1881.

Affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We have carefully examined all the testimony in this case, and are satisfied with the decree below. It is abundantly proven that the stock which the assignee in bankruptcy now seeks to reach, never was in equity the property of the bankrupt. Unless all the testimony is to be disbelieved, the original purchases were made honestly and in good faith with the proceeds of the separate

estate of the wife, and years before the bankrupt became involved in the liabilities which caused his failure.

The decree is affirmed.

Mr. John R. Shepley and *Mr. S. T. Glover* for plaintiff in error.

Mr. J. E. McKeighan for defendants in error.

LEVY *v.* DANGEL.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF IDAHO.

No. 72. Submitted November 4, 1881. — Decided November 14, 1881.

Railway Co. v. *Heck*, 102 U. S. 120, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The judgment in this case is affirmed. The demurrer to the complaint was properly overruled, and we cannot consider the questions presented on the motion for a new trial. *Railway Co.* v. *Heck*, 102 U. S. 120.

Mr. Fillmore Beall for plaintiff in error.

Mr. George Ainslie for defendant in error.

CONTINENTAL BANK NOTE CO. *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 216. Argued March 6 and 7, 1882. — Decided March 20, 1882.

A contract with the United States for the delivery of postage stamps to it construed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The appellant by its several contracts sued on was bound to furnish the Post-office Department all the adhesive postage stamps that might be required during a period ending on the 30th day of April, 1877. As part of the several contracts, also, it bound itself to keep on hand at all times a stock of the several denominations of stamps sufficient to meet all the orders of the Department, and to provide against any and all contingencies likely to occur, so that each and every order might be promptly filled. For this the United States agreed to pay at the stipulated prices for all stamps delivered, and by express stipulation this was to be "full compensation for everything required to be done or furnished under" the contracts. Deliveries were to be made at the post-office in New York, or the Department in Washington. From this it is apparent there was no liability on the part of the United

States to pay until — 1, there had been a requisition by the Department; and 2, a delivery in conformity with what was required. The contracts were limited to a fixed period. The United States were neither bound to order nor the appellant to deliver after the end of the term. Although the stock on hand was manufactured and stored under the supervision of an agent of the Department, it remained the property of the appellant until delivered under the contracts. The inspection and supervision of the agent during the manufacture and storage were to guard against losses and frauds, and to insure promptness in delivery. The ownership was not changed until the delivery which the contracts provided for was complete. If loss occurred by reason of the failure of the United States to call for the whole stock on hand before the end of the term, it was compensated for in the payment for what was delivered. Such was the express agreement of the parties.

The judgment is affirmed.

Mr. John R. Dos Passos and *Mr. William McMichael* for appellant.

Mr. Attorney General and *Mr. Solicitor General* for appellee.

BONNIFIELD *v.* PRICE.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF WYOMING.

No. 230. Submitted March 16, 1882. — Decided March 27, 1882.

Hecht v. *Boughton*, 105 U. S. 235, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This is a writ of error to bring here for review a judgment of the Supreme Court of the Territory of Wyoming in a case where the trial was not by jury. It is therefore dismissed on the authority of *Hecht* v. *Boughton*, 105 U. S. 235, decided at the present term. The appropriate remedy in this case, under the act of April 7, 1874, ch. 80, Sup. Rev. Stat. 12, was by appeal.

But if we could treat this writ of error as an appeal, the case is in no condition for examination here, because there is no such statement of facts in the record as the law requires. The bill of exceptions taken in the District Court contains all the evidence, and as the Supreme Court directed a judgment in favor of the defendant, it is clear that court passed on other questions than such as were presented on the rulings in the admission of evidence. Under these circumstances a statement of facts such as

the statute requires is necessary to enable us to reëxamine the case. *The writ is dismissed.*

Mr. John W. Hammond, Mr. C. N. Potter and *Mr. E. P. Johnson* for plaintiff in error.

Mr. George F. Price for defendant in error.

MELLON *v.* DELAWARE, LACKAWANNA AND WESTERN RAILROAD CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

No. 244. Submitted March 24, 1882. — Decided April 3, 1882.

The burden of proving this case is on the appellant, but the weight of the evidence is with the appellee.

MR. JUSTICE WOODS delivered the opinion of the court.

The bill charged infringement of letters patent, dated October 2, 1866, granted to Edward Mellon, one of the complainants, for an improvement in the mode of attaching tires to wheels of locomotives. Mellon had assigned a one-half interest in his letters patent to William Matthews and they two were joined as complainants.

The defendant pleaded that while Mellon was the sole owner of the patent, to wit: on May 15, 1867, he had, for a valuable consideration granted a license in writing to the defendant for the full term of the patent to use the improvement described therein upon all its locomotives, locomotive tires and wheels.

The complainants took issue on this plea. The Circuit Court heard the cause upon the pleadings and evidence and dismissed the bill. The appeal of the complainants has brought up the case for our consideration.

To support the issue on its part the defendant produced a license in writing, signed and sealed by Mellon, dated May 15, 1867, which, its execution being admitted by Mellon, proved every allegation of the plea.

The appellants asserted, however, that the license had been delivered as an escrow to John Brisbin, the president of the appellee, in order that he might present it at the next meeting of the board of directors of the company, and if the board consented to pay and did pay thirty-five hundred dollars for the license, it was to take effect, otherwise not; and that nothing whatever had been paid for it. The appellee denied this, and asserted that the delivery was upon a valuable consideration received by Mellon, was

absolute and without condition or reference to any future contingency.

As the license is in the possession of appellee and is produced by it on the trial, and on its face is absolute and without any limitation or condition, the burden of proof is upon the appellants to show that it was delivered as an escrow.

The only evidence to maintain their side of the controversy is in the deposition of Mellon. On the part of the appellee is the testimony of Brisbin, its president, to whom the license was delivered. His deposition contains a direct and explicit denial of the testimony of Mellon in reference to the delivery of the license, and he is corroborated by the evidence of another witness, who was superintendent of the rolling stock of the appellee at the time the license was delivered.

The case turns upon a single question of fact. The burden of proving that fact is on the appellants, but the weight of the evidence is with the appellee.

The decree of the Circuit Court dismissing the bill was right, and must be *Affirmed.*

Mr. Hector T. Fenton and *Mr. Furman Sheppard* for appellants.

No appearance for appellee.

UNITED STATES *v.* CANDA.

A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 257. Submitted April 3, 1882. — Decided April 10, 1882.

United States v. *Rosenburgh*, 7 Wall. 580, and *United States* v. *Avery*, 13 Wall. 251, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case comes here on a certificate of division as to questions arising on a motion to quash an information, and must be dismissed for want of jurisdiction, on the authority of *United States* v. *Rosenburgh*, 7 Wall. 580, and *United States* v. *Avery*, 13 Wall. 251. It is consequently so ordered. *Dismissed.*

Mr. Attorney General and *Mr. Solicitor General* for plaintiff.

No appearance for defendants.

UPTON *v.* MASON.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF WYOMING.

No. 262. Submitted April 3, 1882. — Decided April 10, 1882.

Hecht v. *Boughton*, 105 U. S. 235, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This suit is dismissed on the authority of *Hecht* v. *Boughton*, No. 912, of this term, 105 U. S. 235. The remedy is by appeal instead of a writ of error. *Affirmed.*

Mr. Homer Cook and *Mr. E. P. Johnson* for plaintiff in error.

Mr. E. W. Mann for defendant in error.

UPTON *v.* STEELE.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF WYOMING.

No. 263. Submitted April 3, 1882. — Decided April 10, 1882.

Hecht v. *Boughton*, 105 U. S. 235, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This suit is dismissed on the authority of *Hecht* v. *Boughton*, No. 912, of the present term, 105 U. S. 235. As there was no trial by jury, the case should have been brought here by appeal instead of a writ of error. *Dismissed.*

Mr. Homer Cook and *Mr. Edward P. Johnson* for plaintiff in error.

Mr. William R. Steele in person.

RALLS COUNTY COURT *v.* UNITED STATES *ex rel.* GEORGE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 278. Argued and submitted April 13, 1882. — Decided May 8, 1882.

Ralls County Court v. *United States*, 105 U. S. 733, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This judgment is affirmed on the authority of *County Court of Ralls County* v. *The United States ex rel. Douglass*, 105 U. S. 733,

just decided, from which it cannot be distinguished. The cause is remanded, with an order like that in No. 277.

Mr. H. A. Cunningham for plaintiffs in error.

Mr. J. H. Overall for defendant in error.

UNITED STATES *v.* BARNETT.

APPEAL FROM THE COURT OF CLAIMS.

No. 901. Argued January 18, 1882.—Decided March 6, 1882.

United States v. *Kaufman*, 96 U. S. 567, followed.

Mr. Chief Justice Waite delivered the opinion of the court.

This judgment is affirmed on the authority of *United States* v. *Kaufman*, 96 U. S. 567, from which it cannot be distinguished in principle. *Affirmed.*

Mr. Attorney General and *Mr. William Lawrence* for appellant.

Mr. J. W. Douglass and *Mr. George L. Douglass* for appellees.

GRAME *v.* MUTUAL ASSURANCE SOCIETY OF VIRGINIA.

GODDIN *v.* MUTUAL ASSURANCE SOCIETY OF VIRGINIA.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

Nos. 1049 and 1050. Submitted November 28, 1881.—Decided December 12, 1881.

Steines v. *Franklin County*, 14 Wall. 15, followed.

Mr. Chief Justice Waite delivered the opinion of the court.

The motions for writs of *certiorari* are denied. A petition for a rehearing, filed in the court below after judgment, which has been refused, is no part of the record to be returned here with a writ of error for a review of the judgment. *Steines* v. *Franklin County*, 14 Wall. 21.

The motions to affirm are also denied. The further consideration of the motions to dismiss is postponed until the causes come up for hearing on the merits. *Denied.*

Mr. W. B. Webb and *Mr. James Lyons* for plaintiffs in error.

Mr. P. Phillips, *Mr. W. A. Maury* and *Mr. W. H. Phillips* for defendant in error.

THOMPSON *v.* PERRINE.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 75. Argued January 10 and 11, 1883. — Decided January 22, 1883.

Thompson v. *Perrine*, 106 U. S. 589, followed.

MR. JUSTICE HARLAN delivered the opinion of the court.

This case is controlled by the decision just made in case No. 76 between the same parties. *The judgment is affirmed.*

Mr. F. N. Bangs and *Mr. Timothy F. Brush* for plaintiff in error.

Mr. William M. Evarts, Mr. James K. Hill and *Mr. H. T. Wing* for defendant in error.

KAHN *v.* HAMILTON.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 149. Submitted November 1, 1882. — Decided November 13, 1882.

Hecht v. *Boughton*, 105 U. S. 235, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This writ of error is dismissed upon the authority of *Hecht* v. *Boughton*, 105 U. S. 235. The case is in all respects like that of *Woolf* v. *Hamilton*, just decided. *Dismissed.*

Mr. J. R. McBride for plaintiffs in error.

Mr. S. A. Merritt for defendants in error.

BADGER *v.* RANLETT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 587. Submitted November 27, 1882. — Decided December 11, 1882.

Badger v. *Ranlett*, 106 U. S. 255, followed.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

The questions presented in this case are the same as those in the other suit between the same parties, decided herewith, and for the reasons assigned in the opinion in that case the judgment in this case is *Affirmed.*

Mr. Attorney General and *Mr. Solicitor General Phillips* for the plaintiff in error.

Mr. W. W. Howe and *Mr. J. H. Kennard* for the defendants in error.

CHICAGO & ALTON RAILROAD *v.* WIGGINS FERRY CO.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 839. Submitted January 8, 1883. — Decided January 29, 1883.

Chicago & Alton Railroad v. *Wiggins Ferry Co.*, 108 U. S. 18, followed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

This case is in all material respects like that between the same parties just decided, and the order of the Circuit Court remanding the case is affirmed for the reasons there given. *Affirmed.*

Mr. C. H. Krum and *Mr. C. Beckwith* for plaintiff in error.

Mr. S. T. Glover and *Mr. J. R. Shepley* for defendant in error.

STEEVER *v.* RICKMAN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

No. 67. Argued December 4 and 5, 1883. — Decided December 17, 1883.

Affirmed on the facts.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

If all that is charged in this bill were true, there could be no doubt of the right of the appellant to the relief she asks, as well on account of the actual as constructive fraud of the appellee. But the answer, which is under oath, is as emphatic and direct in its denials as the bill is in its charges. There is no disputed question of law. The only controversy is as to the facts. The testimony is voluminous and it would serve no useful purpose to discuss it in an opinion. It is sufficient so say that we are entirely satisfied with the conclusion reached by the Circuit Court.

Decree affirmed.

Mr. William Stone Abert, Mr. West Steever and *Mr. Sterling B. Toney* for appellant.

Mr. W. O. Dodd for appellee.

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